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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 254.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, AND JEAN H. EVEREST, APPELLANTS,

vs.

WILLIAM C. RENFROW AND R. J. EDWARDS.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

FILED MAY 5, 1905.

(19,748.)

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a In the Supreme Court of the Territory of Oklahoma.

No. 1465.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Appeal to the Supreme Court of the United States.

b In the Supreme Court of the Territory of Oklahoma.

Citation.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

The United States of America to said William C. Renfrow and R. J. Edwards, defendants in error:

You are hereby cited and admonished to be and appear in the city of Washington on the 26th day of May, 1905, in pursuance to the appeal and writ of error in the clerk's office of the Supreme Court of the Territory of Oklahoma, wherein the said Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright, and Jean H. Everest are plaintiffs in error, and you, the said William C. Renfrow and R. J. Edwards, are defendants in error, then and there to show cause if any there be, why the judgment rendered by the Supreme Court of the Territory of Oklahoma against the said plaintiffs in error, and in the said appeal and writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James K. Beauchamp, Associate Justice of the Supreme Court of the Territory of Oklahoma, this 27 day of April, 1905.

JAMES K. BEAUCHAMP,
Associate Justice of the Supreme Court of the Territory of Oklahoma.

The defendants in error therein named hereby accept service of the within and foregoing citation for appeal and writ of error.

Dated this 27 day of April, 1905.

W. C. RENFROW AND
R. J. EDWARDS,
Defendants in Error.
By SHARTEL, KEATON & WELLS,
Their Attorneys.

[Endorsed:] No. 1465. Oscar D. Halsell, *et al.*, Plaintiff in Error, *vs.* William C. Renfrow *et al.*, Defendants in Error. Citation. Filed Apr. 28, 1905. Benj. F. Hegler, Clerk Supreme Court, By ——, ——, Deputy.

1 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, and DANIEL P. WRIGHT, Plaintiffs in Error,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Petition for Order allowing an Appeal to the Supreme Court of the United States.

The said plaintiffs in error, feeling themselves aggrieved by the final judgment and decree of the said court, made and entered herein on the third day of September, 1904, whereby it is found, ordered and decreed that the evidence fails to show a sufficient memorandum and contract in writing to entitle the plaintiffs in error to a specific performance of their contract; and whereby it is found, ordered and decreed that there was not such performance of said contract as to take the same out of the statute of frauds; and whereby it is ordered and decreed that the plaintiffs take nothing by their said suit, and the same is dismissed and they are adjudged to pay the costs thereof, and the order and judgment of the district court is, in all things, affirmed; they, the plaintiffs in error, do hereby pray and take appeal from the said judgment and decree of this court to the Supreme Court of the United States, for the reasons and upon the grounds specified in and by the assignment of errors filed herewith and made a part hereof; and they hereby pray that their said appeal may be allowed, and an order made and entered to that effect herein, and they pray that a full and true transcript of the papers, proceedings and record upon which said judgment was entered may be made, authenticated and sent to and filed in the Supreme Court of
2 the United States, as provided by law and the rules of said Court, together with an authenticated copy of the opinion of the Supreme Court of the Territory of Oklahoma, herein, and that a statement of the facts of the said case in the nature of a special verdict may be made and certified by this court to said Supreme —— of the United States, etc.

J. H. EVEREST AND
H. H. HOWARD,
Attorneys for Plaintiffs in Error.

Endorsed: No. 1465—Oscar D. Halsell *et al.*, Plaintiffs in error, *vs.* William C. Renfrow *et al.*, Defendants in Error—Petition for Order Granting Appeal to Supreme Court of United States—Filed April 8, 1905, Benj. F. Hegler, Clerk Supreme Court.

3 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND and DANIEL P. WRIGHT, Plaintiffs in Error,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Assignment of Errors in the Supreme Court of the United States.

The said plaintiffs in error say that there is manifest error in the record, proceedings and opinion of the Supreme Court of the Territory of Oklahoma in said cause, and assign as such error the following, to wit:

First: The said court erred in affirming the judgment of the district court of Oklahoma County, said Territory.

Second: The said court erred in finding and concluding that the telegrams, letters and other writings in evidence did not constitute a valid contract to sell real estate.

Third: The court erred in finding and concluding that the evidence did not show a sufficient part performance to take such contract out of the statute.

Fourth: The court erred in failing to find that the defendants in error are estopped to dispute the validity of the contract.

Fifth: The court erred in refusing to decree specific performance of the contract.

Wherefore, the plaintiffs in error pray that the said judgment of the Supreme Court of the Territory of Oklahoma may be reversed and the cause remanded, directing said court to reverse the decision of said district court, and order a specific performance of
4 the contract, and that the plaintiffs in error recover their costs, and have all proper relief in the premises.

J. H. EVEREST AND
H. H. HOWARD,
Attorneys for Plaintiffs in Error.

Endorsed: No. 1465—Oscar D. Halsell *et al.*, Plaintiffs in error, *vs.* William C. Renfrow *et al.*, Defendants in error—Assignment of Errors—Filed April 8, 1905. Benj. F. Hegler, Clerk Supreme Court.

5 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, and DANIEL P. WRIGHT, Plaintiffs in Error,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Affidavit of Value of Property.

J. H. Everest, of lawful age, being duly sworn, says on his oath that he is one of the above named plaintiffs in error, and one of the

attorneys in said cause, and that he is familiar with said controversy and the property therein involved and sought to be recovered, and that the same is of the full value of more than five thousand dollars, and of not less than the value of ten thousand dollars, and has been of such value at all times since the commencement of said action, and of such value over and above all interest and costs.

J. H. EVEREST.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Subscribed in my presence and sworn to before me, this 7th day of April 1905.

[SEAL.] B. P. HOUGHTON,
Notary Public.

My commission expires Oct. 30, 1906.

Endorsed: No. 1465—Oscar D. Halsell *et al.*, Plaintiffs in error, *vs.* William C. Renfrow *et al.*, Defendants in error—Affidavit of Value of Property—Filed April 8, 1905. Benj. F. Hegler, Clerk Supreme Court.

6 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, and DANIEL P. WRIGHT, Plaintiffs in Error,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Order Granting an Appeal.

Now on this 8 day of April, 1905, for and on behalf of the said plaintiffs in error, there having been presented to the Chief Justice of the said Court a petition for an appeal to the Supreme Court of the United States, accompanied by their assignment of errors and an affidavit of one of the parties and a competent witness, showing that the value of the property in controversy herein exclusive of interest and costs, exceeds five thousand dollars;

It is hereby found and declared that the said plaintiffs in error are entitled to their said appeal, as in their said petition prayed, and that the value of the property in controversy herein exceeds the sum of five thousand dollars;

And it is hereby ordered that the said appeal so prayed be and it is hereby allowed and granted; and the clerk of this court is hereby ordered and directed to make and certify a full, true and correct transcript of the record herein, together with the opinion of this court, to the Supreme Court of the United States; and that a bond, with good and sufficient security to be approved by a Justice of this Court, in the sum of one thousand dollars, be given by the appellants, within twenty days from this date to the defendants in error, conditioned that the plaintiffs in error will prosecute their said appeal to

effect, and answer all damages and costs if they fail to make their plea good.

JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court.*

7 Said Order is endorsed as follows: No. 1465—Oscar D. Halsell *et al.*, Plaintiffs in error, *vs.* William C. Renfrow *et al.*, Defendants in error—Order Granting Appeal to Supreme Court of United States—Filed April 8, 1905, Benj. F. Hegler, Clerk Supreme Court.

8 Know all men by these presents: That we, Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Jean H. Everest, and Daniel P. Wright, of Oklahoma County, in the Territory of Oklahoma, as principals, and C. H. Everest and Z. T. Wright and H. E. Lee, as sureties, are held and firmly bound unto William C. Renfrow and R. J. Edwards, in the penal sum of One Thousand Dollars ($1,000), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals, this 11th day of April, 1905.

The condition of the above obligation is such, that, whereas the said principals are the plaintiffs in error in a certain cause in the Supreme Court of the Territory of Oklahoma, wherein the said William C. Renfrow and R. J. Edwards are defendants in error, and which said cause was decided by said court adversely to said plaintiffs in error, the opinion therein being filed September 3, 1904, and the said plaintiffs in error have prayed and taken an appeal from the final judgment and decision of said Supreme Court of the Territory of Oklahoma to the Supreme Court of the United States in said cause.

Now if they, the said Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Jean H. Everest, and Daniel P. Wright, shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their plea good, then and in that case the above obligation to be null and void; otherwise to remain in full force and effect.

OSCAR G. LEE. [SEAL.]
L. L. LAND. [SEAL.]
D. P. WRIGHT. [SEAL.]
OSCAR D. HALSELL. [SEAL.]
JEAN H. EVEREST. [SEAL.]
C. H. EVEREST. [SEAL.]
Z. T. WRIGHT. [SEAL.]
HARLEY E. LEE. [SEAL.]

9 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

C. H. Everest, being first duly sworn, deposes and says, that he is a resident of Oklahoma County, Territory of Oklahoma, and a householder therein, and that he is worth the sum of One Thousand Dollars over and above all his debts, liabilities and exemptions under the statutes of the Territory of Oklahoma.

C. H. EVEREST.

Subscribed and sworn to before me this 19th day of April, 1905.
[SEAL.]
B. P. HOUGHTON,
Notary Public.

My commission expires Oct. 30, 1906.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

H. E. Lee, being first duly sworn, deposes and says, that he is a resident of Oklahoma County, Territory of Oklahoma, and a householder therein, and that he is worth the sum of One Thousand Dollars over and above all his debts, liabilities and exemptions under the statutes of the Territory of Oklahoma.

HARLEY E. LEE.

Subscribed and sworn to before me this 20th day of April, 1905.
[SEAL.]
B. P. HOUGHTON,
Notary Public.

My Commission expires October 30th, 1906.

Approved by me this 20th day of April, 1905.
JAMES K. BEAUCHAMP,
Justice of the Supreme Court.

Said Bond is endorsed: No. 1465—In Supreme Court Oklahoma Territory. Oscar D. Halsell *et al.*, Plaintiffs, *vs.* Wm. C. Renfrow *et al.*, Defendants, Bond—Filed April 21, 1905, Benj. F. Hegler, Clerk Supreme Court.

10 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Petition in Error.

The said plaintiffs in error, respectfully complaining, represent to said court:

At a term of the district court of said Territory lately held within and for Oklahoma County therein, judgment, upon consideration of the court, was rendered against said plaintiffs in error and in

favor of said defendants in error; that in said cause the plaintiffs in error were the plaintiffs and the defendants in error the defendants, and such judgment being that said plaintiffs take nothing by their said action and pay the costs thereof, from which said judgment and the orders and findings of said district court, they have taken an appeal to this court, the original transcript and case made, duly signed, certified and settled, being hereto attached, marked "Exhibit A" and made a part hereof.

And said plaintiffs in error allege that there is error in the said proceedings, record and case made in the following particulars, to wit:

1. The said district court erred in denying and overruling their motion for a new trial in said cause.

2. The said court erred in rendering judgment against them and in favor of said defendants in error in said cause.

3. The court erred in finding that there was not a valid and legal contract between the parties hereto and in refusing to decree the specific performance thereof.

11 & 12 4. The said court erred in finding that the conduct of the parties hereto was insufficient to take said contract out of the statute of frauds, and in failing to decree the performance thereof.

5. Said court erred in holding that the defendants in error were not estopped to deny the legality of the contract sued on herein.

6. The said judgment is against the weight of the evidence and contrary to law.

Wherefore, the plaintiffs in error pray that said cause and judgment may be reversed and remanded, and said district court ordered to decree and enforce the specific performance of the said contract sued on, and for costs and all proper relief.

OSCAR D. HALSELL,
OSCAR G. LEE,
LEONIDAS L. LAND,
DANIEL P. WRIGHT,
JEAN H. EVEREST,
Plaintiffs in Error.
By J. H. EVEREST AND
H. H. HOWARD,
Their Attorneys.

Filed Feb. 5, 1904.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

13 In the Supreme Court of the Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Case Made.

Be it remembered that on March 8, 1901, the said plaintiffs in error filed in the District Court of Oklahoma County, in the Territory of Oklahoma, their certain petition against the defendants in error, which said petition is as follows, and that thereafter, on the days indicated and at the times specified, the further proceedings were had in said cause and court as hereinafter set forth and shown to wit:
Filed Feb. 5, 1904.

BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

14 TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

In the District Court Within and for Said County and Territory Aforesaid.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW, Defendant.

Specific Performance.

Petition.

The plaintiffs for a cause of action herein against the defendant, William C. Renfrow, allege and say: That on or about the — day of February, 1901, the defendant was the claimant for and the alleged and reputed owner of the following described tract and parcel of land, to wit: a portion of the north half of the northwest quarter (¼) (otherwise described as Lots Three (3) and Four (4) of Section numbered Four (4) in Township numbered Eleven (11) north of Range numbered Three (3) West I. M. described as follows, to wit:

Beginning at a point where the center of the alley between Noble and Chickasaw Streets in South Oklahoma Addition to Oklahoma City, intersects the east line of said land, said point being nine hundred and ten feet (910) south of the northeast corner of said land; thence due west on a line parallel with the north line of said land to the west line thereof; thence north along said west line five hundred and eighteen feet (518) to the southwest corner of the land deeded to Francis Kelch; thence due east on a line parallel with the north

line of said land twelve hundred twenty-two and forty-three one hundredths feet (1222.43) to the southeast corner of the land deeded to Francis Kelch; thence north on a line parallel with the west line of said land three hundred ninety-two (392) feet
15 to the north line thereof; thence east along the north line of said land to a point five hundred eighty (580) feet due west of the northwest corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence east on a line parallel with the north line of said land one hundred eighty (180) feet; thence south on a line parallel with the east line of said land three hundred eighty (380) feet to the southwest corner of the Washington Public School grounds on said land; thence due east to the east line of said land; thence south along said east line to the point or place of beginning.

And that on said date, being desirous of selling the same, the said defendant, William C. Renfrow, placed the said tract and parcel of land in the hands of one George J. Shields for sale for the sum of Ten Thousand Dollars cash, said George J. Shields being at said time a real estate agent and broker doing business in Oklahoma City, O. T., and by said action, the said defendant, William C. Renfrow, made and constituted the said George J. Shields his agent for the sale of said real estate. The said agency, thus established, was oral. That on the 14th day of February, these plaintiffs, acting by Leonidas L. Land, one of the plaintiffs, purchased said tract and parcel of land from the said George J. Shields, the agent of the said William C. Renfrow, defendant as aforesaid for said sum of Ten Thousand Dollars, and deposited with the said George J. Shields as part payment thereon and as part of the purchase price therefor, the sum of Five Hundred Dollars, and thereupon the said George J. Shields sent a message in writing, to wit, a telegram to the said William C. Renfrow, advising him of the sale of said tract and parcel of land above described, to the said plaintiffs, and received in response to said message the following telegram from the said William C. Renfrow, to wit:

"JOPLIN, MO., *February* 14, 1901.

"George J. Shields, Oklahoma City, O. T.:

"I confirm sale by you Ten Thousand cash Five Hundred forfeit. 1:17 p. m.

"W. C. RENFROW."

16 That a few days thereafter, to wit, on or about the — day of February, 1901, said William C. Renfrow, defendant, came to Oklahoma City, bringing with him a warranty deed to plaintiffs to said tract and parcel of land above described, duly signed and executed by himself and wife, Mrs. William C. Renfrow, and duly acknowledged before an officer authorized to take acknowledgments.

That the said tract and parcel of land thus sold and conveyed to

the plaintiffs by said defendant was the tract having the boundaries and description heretofore set forth in this petition, and for the purpose of further showing and explaining to plaintiffs the exact boundaries and description of said land, and the exact location thereof, the said William C. Renfrow furnished these plaintiffs a plat of said tract of land, a copy of which is hereto attached and marked "Exhibit A" and made a part hereof.

That the agreement made by the said George J. Shields with these plaintiffs on the 14th day of February A. D. 1901, which said contract and agreement was ratified by the said William C. Renfrow in the telegram, a copy of which has been heretofore set out, it was covenanted and agreed that said tract of land thus to be conveyed, was to be free and clear of all liens and encumbrances of what kind or nature soever and that the warranty deed drawn and signed by the said William C. Renfrow and his wife as aforesaid, contained the usual covenants of warranty and the agreement on the part of the said William C. Renfrow and his wife that said tract of land was free and clear of all encumbrances.

That after the said William C. Renfrow and wife had made said deed, and after the abstract to said land which said William C. Renfrow had furnished plaintiffs had been examined by plain-
17 tiffs, it was discovered that a small house had been built on a portion of the lands heretofore described, which the said William C. Renfrow sold to the plaintiffs, and thereupon both plaintiffs and defendant began to inquire as to the title to said tract and portion of land on which said house was located, and it was discovered and found to be a fact that a part of said land 50 by 100 feet in dimensions had been previously sold by Bennie L. Cunningham to one C. A. Compton by a good and sufficient quitclaim deed, and said deed being recorded before the said defendant William C. Renfrow had acquired title to said tract of land, and the said prior conveyance constituted an obstacle to the giving of plaintiffs perfect title to all the tract as originally agreed upon. That thereupon, it was agreed orally between plaintiffs and William C. Renfrow that the sum of Two Hundred Dollars should be deducted from the Ten Thousand Dollars agreed upon as the purchase price of said land to compensate the plaintiffs for the loss and damage caused by the inability of the said William C. Renfrow to make a deed to said tract 50 by 100 feet in size. That about the same time, said William C. Renfrow and the plaintiffs discovered that one — Springmeyer and — were in the personal possession of said tract of land and were plowing thereon, and were claiming to have a valid lease to said tract of land for the year of 1901, and that their said occupancy constituted a lien and encumbrance upon said tract of land, and that thereupon the said defendant, William C. Renfrow, agreed to free said tract of land from the possession of the said alleged tenants, and made several attempts to induce said alleged tenants to vacate and leave said tract of land, but said Springmeyer and ——, the alleged tenants as aforesaid, refused so to do. That afterwards, to wit, on or about the 27th day of February, 1901, said William C. Renfrow sent a deed to the Western National Bank of Oklahoma City, O. T.

to a portion of the said tract and parcel of land described on
18 page one of this petition, said deed being executed by said William C. Renfrow and wife, to Oscar D. Halsell, one of the plaintiffs, being named as grantee therein, wherein the said William C. Renfrow excepted from said deed certain portions of the tract in controversy, and did not offer to convey the tract and parcel of land which he had agreed and covenanted to convey to plaintiffs, and said William C. Renfrow instructed his said agent, the Western National Bank of Oklahoma City, O. T. to present said deed to plaintiffs and to demand payment thereon and therefor in the sum of Nine Thousand Five Hundred Dollars, and refused then and there to make any allowance or deductions from said agreed purchase price of Ten Thousand Dollars of Two Hundred Dollars according to said agreement to pay for the said tract of land 50 by 100 feet, and insisted upon plaintiffs accepting said deed subject to the liens and occupancy of said alleged tenants, Springmeyer and ——.

These plaintiffs refused to accept said deed for the reason that the tract of land therein described, was not all the tract of land purchased from the said William C. Renfrow, and for the further reason that said tract of land was not free of all liens and encumbrances as agreed upon between said plaintiffs and defendants.

That on said 27th day of February, 1901, the said plaintiffs by one Leonidas L. Land, tendered to said Western National Bank, as agent of the said William C. Renfrow, defendant, the sum of Nine Thousand Three hundred Dollars in cash, which with the Five Hundred Dollars already paid the said defendant, William C. Renfrow and the Two Hundred Dollars which said William C. Renfrow had agreed to deduct from said purchase price as the value of the tract 50 by 100 feet to which he could not give title, and thereupon demanded of said Western National Bank, agent of said William C. Renfrow as aforesaid, the delivery of a good and sufficient warranty deed to
all of the tract and parcel of land, described on page one of
19 this petition except the tract 50 by 100 feet heretofore deed-by said Bennie L. Cunningham to C. A. Compton, said deed to be a fee simple, title, free and clear of all liens and encumbrances, and said demand was communicated to said William C. Renfrow and the said William C. Renfrow did in writing on March 1st, 1901, acknowledge*d* the sale to these plaintiffs, but refused to make a deed according to said agreement. A full, true and correct copy of said letter is hereto attached, marked "Exhibit B" and made a part hereof.

Wherefore plaintiffs pray for a judgment and order compelling the defendant, William C. Renfrow to make and execute a good and sufficient warranty deed to the said tract and parcel of land described on page one of this petition, except the tract 50 by 100 heretofore deed- by Bennie L. Cunningham to one C. A. Compton *feet* and clear of all liens and encumbrances of what kind or nature soever, according to the contract and agreement of sale made by the said William C. Renfrow with these plaintiffs as aforesaid; and said plaintiffs here bring into court and tender to the said William C. Renfrow the said sum of Nine Thousand and Three Hundred Dollars in pay-

ment for the said deed and conveyance and plaintiffs ask that if the said William C. Renfrow neglect, fail, or refuse to make, execute and deliver said deed and conveyance, then that the judgment and decree herein rendered shall operate as a conveyance in fee simple from said defendant to said plaintiffs for the tract and parcel of land described on page one of this petition except the tract of land 50 by 100 feet heretofore deeded by said Bennie L. Cunningham to C. A. Compton, free and clear of all liens and encumbrances as aforesaid; and that plaintiffs have and recover of said defendants the costs of this suit and that they have such other and further relief as equity and good conscience require.

OSCAR D. HALSELL,
OSCAR G. LEE,
LEONIDAS L. LAND,
DANIEL P. WRIGHT, AND
J. H. EVEREST, *Plaintiffs.*
By J. H. EVEREST,
Their Attorney.

20 OKLAHOMA TERRITORY, *County of Oklahoma, ss:*

Leonidas L. Land being first duly sworn, deposes and says: That he is one of the above named plaintiffs; that he has read the foregoing petition and understands the contents thereof, and that the things and matters therein alleged are true and correct.

LEONIDAS L. LAND.

Subscribed and sworn to before me on this 8th day of March A. D. 1901.

NEWTON AVEY, *N. P.*

My Com. ex. March 9, 1902.

Endorsed: Case #2856. Copy. Oscar D. Halsell, Plffs. *vs.* William C. Renfrow, Dft. Petition. Filed in District Court Oklahoma County, O. T. March 8th, 1901. B. D. Shear, Clerk, By M. McKinley, Deputy. J. H. Everest, Att'y — Plaintiff.

21 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Amended Petition.

In the District Court in and for said County and Territory, February Term, 1901.

No. —.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Comes now the plaintiffs in the above entitled cause, and on leave of the court first had and obtained, amends their petition filed herein

on the 8th day of March, 1901, and for and in place of said original petition, plead, allege and charge as follows, to wit:

The plaintiffs for cause of action herein against the defendants, say that on or about the 14th day of February, 1901, the defendant William C. Renfrow was the claimant for and was the reputed owner of the following described real estate lying and being situate in Oklahoma County, Oklahoma Territory, to wit:

A portion of the north half of the northwest quarter (¼) otherwise described as Lots three (3) and four (4) of section numbered four (4) in township numbered eleven (11) north of range numbered three (3) west I. M., described as follows, to wit:

Beginning at a point where the center of the alley between Noble and Chickasaw Streets in South Oklahoma Addition to Oklahoma City intersects the east line of said land, said point being nine hundred and ten feet (910) south of the northeast corner of said land; thence due west on a line parallel with the north line of said land to the west line thereof; thence north along said west line five hundred eighteen feet (518) to the southwest corner of the land deeded to Francis Kelsch; thence due east on a line parallel with the
22 north line of said land twelve hundred twenty-two and forty-three one-hundredths feet (1222.43) to the southeast corner of the land deeded to Francis Kelsch; thence north on a line parallel with the west line of said land three hundred ninety-two (392) feet to the north line thereof; thence east along the north line of said land to a point five hundred eighty (580) feet due west to the northeast corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence east on a line parallel with the north line of said land one hundred eighty feet (180); thence south on a line parallel with the east line of said land three hundred eighty (380) feet to the southwest corner of the Washington Public School Grounds on said land; thence due east to the east line of said land; thence south along said east line to the point or place of beginning.

That the defendant Renfrow being then and there and theretofore such claimant and alleged and reputed owner of said lands and *and* premises, made, constituted and employed George J. Shields, a real estate agent and real estate broker at Oklahoma City, O. T. his true and lawful agent to sell and dispose of said lands and premises to whomsoever would purchase the same, and authorized, directed and empowered him, the said Shields, to make and enter into contract for the sale of said lands for him, the said defendant, Renfrow, in the usual and ordinary course of business of him, the said Shields, as such real estate agent, and real estate broker aforesaid, whereupon the said Shields then and there and thereafter made it known that he as agent for said defendant Renfrow, was authorized to, and would sell and contract for sale said real estate at the price and sum of $10,000.00, such price and sum being within his authority to so sell, so given him by said Renfrow, and which said authority to so contract and sell said real estate at the price aforesaid, was then and there a good and sufficient contract and authority, and did authorize the

said Shields as such agent to contract and sell said lands for the price and sum aforesaid.

23 That afterwards, on the 14th day of February, 1901, these plaintiffs acting by and through the plaintiff, Leonidas L. Land, by the name and style of L. L. Land, purchased said tract and parcel of land from the said defendant Renfrow, through the said Shields, his broker and agent aforesaid, for the price and sum of $10,000.00 and then and there made payment thereon, of said purchase price to the said Shields for the defendant Renfrow of the sum of $500.00 and agreed and bound themselves to pay to the defendant Renfrow the further sum of $9,500.00 upon his executing and delivering to the plaintiffs a good and sufficient deed conveying the title to said lands from the said Renfrow to these plaintiffs, and which said such title to be a good and sufficient fee simple title, and the said Renfrow to then and there deliver to these plaintiffs possession of said property.

That before the filing of this petition a memorandum in writing of said agreement of purchase and sale was made and executed by the said George J. Shields, as agent of the said defendant, Renfrow, and deliver to these plaintiffs, a copy of which said agreement is hereto attached, marked Exhibit "A" and made a part of this petition.

That upon the entering into said contract of sale and purchase aforesaid by said Shields and these plaintiffs, he the said Shields, on the — day of February, 1901, sent a message in writing by telegram to the said defendant Renfrow at Joplin, in the State of Missouri, advising and notifying said defendant Renfrow of the sale by him of said lands and premises, a copy of which telegraphic message and written instrument is hereto attached, marked Exhibit "B" and made a part of this petition.

That thereafter and in reply to said such message so sent to him, Renfrow, by the said Shields, defendant Renfrow sent a message in writing by telegram to his said agent Shields at Oklahoma City, O. T., which said telegram is of date February 4, 1901, a copy of which said message in writing is hereto attached, marked exhibit "C" and made a part of this petition.

24 That thereafter, and within a few days only, and on to-wit, the — day of February, 1901 the said defendant Renfrow came to Oklahoma City and brought with him a warranty deed in writing signed, executed and acknowledged whereby there was conveyed to the plaintiffs the said tract and parcel of land; that said deed is in the possession of the defendants herein, and a copy thereof cannot be procured to attach hereto, but by the terms of said deed the said land was conveyed by the defendant Renfrow and his wife to these plaintiffs.

That upon examination by the plaintiffs of said deed aforesaid and the title to said lands, it was found and discovered that a portion of the land so sold to the plaintiffs and described in said deed did not belong to the said defendant Renfrow, to-wit: A lot 50 by 100 feet in dimensions, within the boundaries of said land, the same having been sold by Bennie L. Cunningham to C. A. Compton, and that the said

defendant Renfrow was not in a position and could not convey title to these plaintiffs of the part of said tract so theretofore deeded to said Compton, whereupon it was mutually agreed between the plaintiffs and defendant Renfrow that the sum of $200.00 should be deducted from the original purchase price of $10,000.00 to compensate the plaintiffs for the loss of said Compton tract.

It was further found and ascertained in the examination aforesaid of the title to said lands, and the right of possession thereto, that one Springmeyer and others were in the actual pedal possession of said tract of land mentioned and described in said deed that had been so purchased by plaintiffs from the said defendant Renfrow, and were claiming and holding the same under a valid lease for the year 1901.

Whereupon the said defendant Renfrow agreed to then and there procure to the plaintiffs the possession of said lands and free the same from such tenancy and alleged right of tenancy aforesaid.

25 That on the 27th day of February, 1901, the Western National Bank a corporation at Oklahoma City, O. T., being then and there by said defendant Renfrow constituted and appointed his agent to collect the money due him from the plaintiffs on such purchase for said lands, to receive such money, and to deliver deed from said defendant Renfrow to plaintiffs to said lands, and William C. Renfrow caused and procured to be drawn up another deed conveying to Oscar D. Halsell, one of the plaintiffs the lands mentioned heretofore as having been purchased by plaintiffs from the defendant Renfrow with the exception of that part, 50 by 100 feet theretofore deeded to said Compton, which said deed was signed and acknowledged by the said defendant Renfrow and his wife, and without making any allowance or credit for the said $200.00 in lieu of said Compton tract, and without having removed or caused to be cancelled the said alleged tenancy of Springmeyer and others, in the lease and claim under which they were holding possession, presented the said deed to plaintiffs through said Bank at Oklahoma City, O. T., and demanded payment from plaintiffs of the sum of $9500.00, that the plaintiffs refused to accept said deed and pay said $9500.00 for the reason that the said $9500.00 was not the amount due therefor on said lands as had been theretofore agreed as aforesaid between the plaintiffs and defendant, Renfrow, and because the said Renfrow had not at that time removed the tenancy of Springmeyer and others or procured their claim to be cancelled or withdrawn.

That these plaintiffs on the 27th day of February, 1901, and immediately after the said deed was so presented to them, offered to pay to and did tender to the defendant, through its agent, the said Western National Bank, the sum of $9300.00 in cash money, being the balance of the purchase price due from the plaintiffs to the said defendant on said lands, and thereupon demanded of the said Western National Bank, agents as aforesaid, the delivery to plaintiffs of a good and sufficient warrantee deed to all the tract of

26 land described on page 1 of this petition, except the tract 50 by 100 feet heretofore designated as the Compton tract, said deed to be and operate as a conveyance of title in fee simple, free

and clear of all liens and incumbrances; that the said Western National Bank as agent for the said defendant Renfrow as well the said defendant in his own proper person, declined and refused to procure the cancellation of the said lease claim of said Springmeyer and others.

That by reason of the premises the said defendant Renfrow with full knowledge of all the acts and doings of his said agent Shields in and about the premises, ratified each and every of said acts, and in writing ratified and confirmed the said sale of said lands so as aforesaid made by the said Shields to these plaintiffs, and he himself contracted in writing to so sell and convey said lands to these plaintiffs and by reasons of all the premises the said defendant Renfrow before and at the time the said deed was so tendered to plaintiff Halsell by the said Bank for said Renfrow, and before and at the time that the said plaintiffs so tendered to said defendant Renfrow the said $9300.00, had legally bound himself and he was then and there legally bound to accept from the plaintiffs the said $9300.00 as payment in full of the balance of the purchase price for said lands so purchased from *by* them by the plaintiffs, and was legally bound to make and execute a good and sufficient warranty deed conveying to plaintiff the title in fee simple the said lands mentioned on page 1 of this petition, excepting therefrom the tract *the* 50 by 100 feet, known and designated as the Compton tract which title to be free from all liens and incumbrances and was legally bound to free said land from the possession of said Springmeyer and others, and their said claim of tenancy for the year 1901 and being so bound in all the above mentioned particulars, wrongfully refused and declined to deliver a deed conveying such a title to plaintiffs to such property and wrongfully refused to accept and receive the $9300.00 in full of the balance due him from plaintiffs of the purchase money for said lands, and refused and de-
27 clined to free said lands from the claim and possession of said Springmeyer and others, of their claim of lease for the year 1901, all of which he was then and there well able to do and perform.

That thereafter on or about the — day of March, 1901, the defendant R. J. Edwards and the defendant Renfrow wrongfully confederated and conspired together to prevent these plaintiffs from procuring a title to said lands aforesaid from said defendant Renfrow and in pursuance of such confederacy and conspiracy he, the said Edwards with full knowledge of all the matters and things, and of all the facts herein before alleged and of all the transactions hereinbefore alleged, accepted a deed from the said Renfrow then and there made in pursuance of the confederacy and conspiracy aforesaid, by which deed it was pretended to convey the said lands so sold to the plaintiff to him, the said R. J. Edwards, and thereafter the said Edwards wrongfully and in pursuance of such confederacy and conspiracy aforesaid caused and procured said deed to be filed and recorded with the register of deeds of Oklahoma City, O. T. and which said same deed is of record in Book — page — of the land records of Oklahoma County, O. T., that at the time the said defendant Edwards accepted said deed he had full notice and complete knowledge of the

plaintiffs' title and interest in and to said lands, and of all their rights therein, and thereto, and had full and complete notice and knowledge that the said Renfrow had so as aforesaid sold said lands to this plaintiff.

That the said lands plaintiffs purchased from said defendant Renfrow, except out of it the Compton tract, is of the value of $15000.00.

Premises considered the plaintiffs pray for judgment against the defendants compelling and requiring the said defendants William C. Renfrow — to make and execute a good and sufficient warrantee deed to the plaintiff on said tract and parcel of land described on page 1 of this petition, except therefrom the said tract 50
28 by 100 feet known and designated as the Compton tract as may be shown, which deed to be a conveyance in fee simple of said lands aforesaid to the plaintiffs, free and clear of all liens and incumbrance, and to be free and discharged from the claim of said Springmeyer and others, and said plaintiffs here bring into court and tenders to the defendant Renfrow the said sum of $9300.00 as payment in full for said lands and deed of conveyance aforesaid, and in the event the said Renfrow should neglect, fail or refuse to make and execute such deed, then that an accounting be had of the value of such lease claim for the year 1901 in favor of the said Springmeyer and others and that a decree and judgment be rendered herein to operate as a conveyance in fee simple from said defendant Renfrow to said plaintiffs for said lands aforesaid, except the Compton tract as may be determined, and that the value of said claim for lease for year 1901 in favor of said Springmeyer, if any, be deducted from the said $9300.00 and that the said defendant Renfrow be delivered said moneys less the value of such lease claim of said Springmeyer.

That the plaintiffs have a further judgment and decree requiring the said defendant Edwards to bring and produce into court said deed from said defendant Renfrow to said defendant Edwards so recorded and mentioned in this petition, and that the same be directed to be cancelled and delivered to these plaintiffs and that all of the rights, title, claim and interest had, held or claimed by the said R. J. Edwards by reasons of said deed, or otherwise, be divested out of him and be vested in these plaintiffs.

That in the event it should be determined that the plaintiffs are entitled to all of the foregoing decree and judgment in this Court, except cancellation of the said Edwards' deed and the divesture of title from him and the vesting of the same in the plaintiffs, then in that event the plaintiffs pray that they have judgment against the said defendant Renfrow in the sum of $15000.00 together with legal interest thereon from this date, and for all costs of suit.

29 Plaintiffs further pray for all such general and special relief against the defendants, and each of them, as they may show themeslves entitled under the law and the evidence on the trial of the case, whether the same has been specially prayed for or not, and in the event that the wrong relief has been asked and demanded, and it should appear that the plaintiffs are entitled under the law and

the evidence to other and different relief then plaintiffs pray for, that specicfic or general relief that they may be entitled, each and all of them, and will ever pray, etc.

JEAN H. EVEREST,
M. FULTON,
Attorneys for Plaintiffs.

OKLAHOMA CITY, OKLA., 2/14, 1901. No. —.

The State National Bank.

Pay to the order of Geo. J. Shields, $500.00 Five Hundred Dollars, on purchase of 40 acres land of W. C. Renfrow known as Cunningham Tract west and adjoining Washington School Building O. K. City, Oklahoma, O. T.

(Stamp) (Feb. 14, 1901) L. L. L.

30

GEORGE J. SHIELDS,
Real Estate and Rental Agent.

(Internal Revenue Stamp) (10 cents) L. L. Land.

Endorsed on Back: Geo. J. Shields Exhibit A"

Form No. 2.

The Western Union Telegraph Company.
Incorporated

23,000 Offices in America. Cable Service to all the World.

Thos. T. Eckert, President and General Manager.

Send the following message subject to the terms on back hereof, which are hereby agreed to.

OKLAHOMA CITY, O. T., *Feb'y* 14, 1901.

To W. C. Renfrow, Joplin Mo., % Keystone Hotel:

11.31

Have sold the Forty acres Ten thousand cash Five hundred forfeit answer

GEO. J. SHIELDS.

(U. S. Rev. St. 1 cent)

☞ Read the notice and agreement on back. ☜

31

JOPLIN, Mo., *February* 14, 1901.

George J. Shields, Oklahoma City, O. T.

I confirm sale by you Ten Thousand cash, Five hundred forfeit. 1.17 p. m.

W. C. RENFROW.

(I. R. Stamp) (1 cent)

"Exhibit C"

Endorsed: #2856. Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest *vs.* William C. Renfrow and R. J. Edwards—Amended Petition. Filed in District Court Oklahoma County, O. T. Mar. 20, 1901, B. D. Shear, Clerk by M. McKinley, Deputy.

32 *Demurrer.*

In the District Court of the County of Oklahoma and Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Comes now the defendant, R. J. Edwards, and demurs to the amended petition on file herein against him in this cause and for grounds of demurrer alleges that the said amended petition fails to state facts sufficient to constitute a cause of action in favor of the said plaintiffs or either of them and against this defendant.

JOHN W. SHARTEL,
Attorney for Defendant.

Endorsed: #2856. In the District Court Oklahoma County and Territory of Oklahoma. Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest, Pl'ffs *vs.* Wm. C. Renfrow and R. J. Edwards, Def'ts. Demurrer. Filed April 12, 1901. B. D. Shear, Clerk, By M. McKinley, Deputy.

33 In the District Court of the County of Oklahoma and Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Comes now the said defendant, William C. Renfrow and hereby moves the court to require plaintiffs to make their petition more definite and certain in the following respects, to wit:

First. To state whether the said George J. Shields referred to in said petition, as the agent of this defendant, and authorized by this defendant to sell the real estate in controversy, as the agent of this defendant, was constituted as such agent by any authority in writing, and if so to set out a copy of such written authority.

Second. To state whether the agreement alleged in said petition between the plaintiffs and this defendant to deduct two hundred dollars ($200.00) from the purchase price of said land upon account of the lease of the Compton tract referred to in said petition, was a written or verbal agreement and if written to set out a copy thereof.

Third. To state whether the agreement to free said premise from the possession of the parties, then in possession and claiming a right to possession, was a written or verbal agreement and if writte to set out a copy thereof.

All of which this defendant alleges is essential to him in prepar ing his defense that he may be fully appraised of the nature of the cause of action against him.

W. C. RENFROW,
By JOHN W. SHARTEL,
His Attorney.

34 Endorsed: #2856. In the District Court of the County of Oklahoma, Territory of Oklahoma. Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest, Pl'ffs *vs.* Wm. C. Renfrow and R. J. Edwards. Motion. Filed in District Court Oklahoma County, O. T. Jun- 20, 1901, B. D. Shear, Clerk, By M. McKinley, Deputy.

Be it remembered that on the 16th day of December, 1901, the same being one of the juridical days of the regular September, 1901, Term of the District Court of the County of Oklahoma, Territory of Oklahoma:

Present Honorable B. F. Burwell, Judge, B. D. Shear, Clerk: Public proclamation of the opening of court having been ordered and given, the following among other proceedings are had:—

2856.

OSCAR D. HALSELL ET AL.
vs.
WM. C. RENFROW ET AL.

This cause coming before the court on the demurrer to the amended petition, the plaintiffs now confess said demurrer and they are given 5 days in which to file an amended petition.

35 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court of Said Territory, Within and for Said County, in the Third Judicial District.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Amended Petition.

Come now the said plaintiffs, and complaining of the said defendants, allege and say:

1. That on and prior to February 14, 1901, the defendant Wil-

liam C. Renfrow was the owner of the following described real estate and premises, situate in said County and Territory, to wit:

A part of the north half of the northwest quarter of Section four (4) in Township eleven (11) North of Range Three (3) West of the Indian Meridian, more particularly described as follows, to wit:

Beginning at a point where the middle of the alley between Noble and Chickasaw Streets in south Oklahoma Addition to Oklahoma City intersects the east line of said quarter section; thence west on a line parallel with the north line of said quarter section to the west line thereof; thence north along said west line five hundred and eighteen (518) feet to the southwest corner of the parcel deeded to Francis Kelsch; thence north on a line parallel with said north line twelve hundred twenty-two and forty-three hundredths (1222.43) feet, to the southeast corner of the land deeded to Francis Kelsch; thence north on a line parallel with the west line of said land three hundred and ninety-two (392) feet, to the north line thereof; thence east along the north line of said land to a point five hundred
35 and eighty (580) feet west of the northeast corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence east on a line parallel with the north line of said land one hundred and eighty (180) feet; thence south on a line parallel with the east line of said land three hundred and eighty (380) feet to the southwest corner of the Washington public school grounds on said land; thence east to the east line of said land; thence south along said east line to the place of beginning.

2. That at and prior to said time George J. Shields was engaged in business at Oklahoma City, said county, as a real estate agent, buying and selling lands upon commission, and prior to said date was duly authorized by said defendant William C. Renfrow to offer for sale and sell said described land to whomever he might be able at the price hereinafter mentioned, and said agent was duly authorized to sell the same at all the times herein mentioned.

3. That on said day, and while said William C. Renfrow was the owner of said land and said George J. Shields so authorized to sell the same, the plaintiff Leonidas L. Land, acting for all the other plaintiffs as well as for himself, and being by them duly authorized so to do, applied to said George J. Shields to purchase said land and offered therefor the sum of $10,000.00 to be paid in cash, which offer was by said George J. Shields in the name and on the behalf of said William C. Renfrow accepted, and thereupon the plaintiffs performed in part their said contract by paying to said agent of said Renfrow the sum of $500.00 of the purchase money, which payment was made by the check of said Land, a true copy of which is hereto attached, marked "Exhibit A" and made a part hereof.

4. That on the same day and immediately thereafter the said George J. Shields sent to said William C. Renfrow a telegram, duly subscribed, which is in words and figures as shown by the true copy thereof, hereto attached, marked "Exhibit B" and made a part hereof advising him, the said Renfrow, of said sale and of the said payment of $500 of the purchase money.

37 That afterwards, and on the same day, the said William C. Renfrow by his writing of that date, duly subscribed, the

same being a telegram, a true copy of which is hereto attached, marked "Exhibit C" and made a part hereof, accepted said proposition and $500 of the purchase money and ratified and confirmed said contract of purchase and sale so made and entered into by the plaintiffs with his said agent.

6. That in pursuance of said contract and agreement, and in execution thereof, afterwards on the — day of February, 1901, the defendant William C. Renfrow made, subscribed and acknowledged in due form his deed to said land, reciting said consideration and describing the land so sold by him to plaintiffs fully, and brought the same to Oklahoma City for the purpose of completing the conditions and terms of said contract; that plaintiffs are unable to attach a copy of said deed hereto for the reason the same is, if not destroyed by him, in the possession of said defendant Renfrow.

7. That at the time of the making and accepting of said offer of purchase and sale the parties hereto in good faith believed that said Renfrow was the owner of forty acres of land, the location and boundaries of which were well known to the parties hereto, and which were set forth in said deed, but upon investigation of the title to said land it was discovered that they were mutually mistaken, and that a small part of said land had been conveyed by said Renfrow's vendor before conveying to him, that thereupon the parties hereto mutually agreed to the correction of their mistake by deducting $200 from the said purchase price and the omission of said tract so previously conveyed and the execution of a new deed; and said deduction was accordingly made and said Renfrow and his wife made, executed and acknowledged another deed to said land correctly and definitely describing it, with said small tract so previously conveyed omitted therefrom, and which description conforms to that hereinbefore set forth, and thus executing said contract as so corrected except in the delivery of the said deed and the payment of the balance of
38 the purchase money.

8. That thereafter, on February 27, 1901, the said defendant Renfrow placed said deed last mentioned with the Western National Bank, duly authorizing it as his agent to deliver the same to plaintiffs and collect the balance due of the purchase money; that plaintiffs tendered to said bank the whole of the balance due in lawful money of the United States and demanded of said bank the delivery of said deed, which was refused by said bank; and plaintiffs say that either by mistake or through the fraudulent purpose to avoid the completion of said transaction the said Renfrow had instructed said bank to collect a sum greater than was due, and after the discovery thereof, he, said Renfrow, refused to deliver said deed or accept said sum due, although thereafter, on March 1, 1901, he made and subscribed a certain instrument in writing, a true copy of which is hereto attached, marked "Exhibit D" and made a part hereof, whereby he acknowledged the correctness of the amount so tendered; that plaintiffs are unable to attach a copy of the said deed last mentioned for the reason the same, if not destroyed by him, is in possession of said Renfrow.

9. That the defendant R. J. Edwards, prior to the times last above

mentioned, had full notice and knowledge of the facts above set forth, and with such knowledge and notice made and entered into some sort of a fraudulent arrangement, the exact nature of which is unknown to plaintiffs, whereby, on the — day of March, 1901, the said Renfrow executed and delivered to said Edwards a purported deed of conveyance to said land, which was afterwards, and after the commencement of this action, filed for record in the office of the register of deeds of said county, and recorded in book — of deeds, at page —; that said deed is a fraud against the rights of these plaintiffs, and was so made, delivered and accepted for the fraudulent purpose of preventing them from acquiring title to said land.

39 10. That the defendants and each of them have refused and still refuse to convey said land to plaintiffs upon the payment of the balance due and in accordance with the terms of said contract; that said land is at this time of the reasonable value of $18,000.00 that plaintiffs are and at all times have been ready and willing and able to pay the whole of the sum due as a balance on the purchase price of said land, and hereby offer to do so; that after the purchase of said land, and with the knowledge and consent of said Renfrow, and before the conveyance thereof to said Edwards, the plaintiffs went into the actual possession thereof, and thereupon discovered that one Springmeyer and others were in actual possession of a portion of said land, holding the same under a lease which would not expire for many months, and said Renfrow neglected and refused to surrender to them full possession, but consented to give and gave only such occupancy as they might enjoy in connection with said tenants.

11. That said $500 so paid was and is retained by said Renfrow and said contract executed in so far as can be by the plaintiffs, in that they have tendered the balance due, and entered into such possession as could be had as against said tenants and said Edwards, and same has been performed by said Renfrow except, as to the delivery of the deed therefor and the surrender of full possession.

12. The plaintiffs say further that after the tender of said purchase money, the payment of said $500.00, the execution of said deeds, and the taking possession of said lands by the plaintiffs, and their rights had fully attached, and the defendant Renfrow had refused to convey said premises on the payment of the balance due, the check as shown by said "Exhibit A" was changed and altered under the advice and directions of M. Fulton, Esq., then the attorney for the plaintiffs in this action, by inserting therein the
40 words "on purchase of 40 acres land of W. C. Renfrow known as Cunningham tract west and adjoining Washington School Building O. K. City, Oklahoma Co., O. T." and by adding thereto a revenue stamp of denomination of 10 cents.

Wherefore the plaintiffs pray that said deed from William C. Renfrow to R. J. Edwards be decreed fraudulent and void, and that the plaintiffs may have a decree for the specific performance of said contract, and that the defendants be decreed to hold said land for the use and benefit of the plaintiffs, and compelled to convey and deliver the same by good and sufficient deed upon payment of the

balance due, and if for any reason said land cannot be so conveyed, free from encumbrances, that the court will examine the title of said land and find its condition, and decree that said defendants be required to convey the same, subject to such incumbrances as exist, and that proper and reasonable deductions be made from the said purchase price to compensate the plaintiffs for such defects as may appear on said title, and if for any reason such relief cannot be had that this cause be retained by the court for an accounting and assessment of damages, and that the plaintiffs recover their costs; and for all proper relief in the premises.

OSCAR D. HALSELL,
OSCAR G. LEE,
LEONIDAS L. LAND,
DANIEL P. WRIGHT,
JEAN H. EVEREST,
Plaintiffs.

By HOWARD & AMES,
Their Attorneys.

OKLAHOMA CITY, OKLA., 2/14, 1901.

The State National Bank

Pay to the order of Geo. J. Shields $500.00 (Five Hundred Dollars).

L. L. LAND.

2c. stamp.
Endorsed: Geo. J. Shields.

Exhibit A.

41

"EXHIBIT B."

OKLAHOMA CITY, O. T., *Feb.* 14, 1901.

To W. C. Renfrow, Joplin, Mo.:

11:31.
Have sold the Forty acres Ten Thousand cash five hundred forfeit. Answer.

GEO. J. SHIELDS.

U. S. Rev. St. 1 cent.

Exhibit B.

EXHIBIT C.

JOPLIN, Mo., *February* 14, 1901.

George J. Shields, Oklahoma City, O. T.:

I confirm sale by you Ten Thousand cash, Five Hundred forfeit. 1.17 p. m.

W. C. RENFROW.

1 R. Stamp 1 cent.

42 EXHIBIT D.

JOPLIN, Mo., *March* 1, 1901.

Mr. Oscar D. Halsell, Oklahoma City, O. T.

MY DEAR SIR: Your letter of the 27th just received, and I note what you say about tendering Mr. Holt, Cashier of the Western National Bank of your city $9300.00 in cash, and $500.00 held by George J. Shields, my agent, and that you requested Mr. Holt at the time to deliver you the deed and possession on what is known as the Cunningham tract.

Now, Mr. Halsell, possession is what caused me so much disappointment and prevented me from closing the deal with you the day after my arrival in Oklahoma City, and the question of possession and how to obtain it was gone over and fully discussed in your presence, and the presence of your associates by my attorney, Mr. Shartel, at his office, who expressed doubt at the time about getting possession at a very early date, provided the lessee should give an appeal bond.

After going over the matter, as I supposed, satisfactory to all, I tendered you my deed with such possession as I could give at the time, and which was not satisfactory to you and associates, and it was finally agreed to leave the matter to Mr. Everest to decide, and who came down to see me at the Lee Hotel that evening, and in endeavoring to get at a satisfactory understanding of the matter, he informed me that he had decided to give me thirty days to perfect my title. I remarked, supposing that I can not perfect my title in thirty days, then what? His reply was it would be a question of damage to be determined later. I was not pleased with his demands, especially as I had no desire to throw the trade, so by the time I had reached Joplin, the following day, I had made up my mind to give you the second opportunity of taking the property with such title and possession as I got when I became the purchaser of the same, and
43 if not satisfactory to you, I would call the trade off, all of which I have done.

Yesterday I had the same offer as made by Mr. Shields for you, except that the party agreed to take chances of obtaining possession himself. I wired that I would accept his proposition and in case he makes satisfactory arrangements with me this week, I shall close the deal with him.

I regret that I found matters in such a shape on my arrival there which prevented me from giving you immediate possession of the property, as it was my intention and desire to do, and I wish you could have felt safe in accepting the deed with chances of possession later on, as I agreed to bear all the expenses of a suit for possession. I could only offer you such title as I had and I gave you the opportunity of taking that, and which you would have been as safe in accepting as any one else. As to the $200.00 referred to, I would have arranged that by taking a quit claim deed back from you and paying you $200.00 as a consideration with the hope that Mr. Cunningham would reimburse me to that extent, and which I believe

he would have done. I especially note what you say about your being ready to fulfill your part of the contract to the letter and without variation, and as an honest man and as a business man, expected me to do the same. No one can know better than yourself how easily a person can unexpectedly be placed in a position where it is impossible for him to carry out a contract to the letter and without variation. You have doubtless made many sales to your customers to deliver goods at a certain price, and because of some unfor-seen rise in the price, or other causes, you refused to fill or ship the order. You will know that it was impossible for me to put you in possession, and my failure to do so was no greater disappointment to you than myself, and I regret exceedingly the termination of this matter.

Most respectfully, W. C. RENFROW.

44 Endorsed: #2856. In the District Court. Oscar D. Halsell *et al. vs.* William C. Renfrow *et al.* Amended Petition. Filed Dec. 16, 1901 B. D. Shear, Clerk, By M. McKinley, Deputy.

In the District Court of the County of Oklahoma and Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Separate Answer of R. J. Edwards.

Comes now the said defendant, R. J. Edwards, and for his separate answer says:

First. That he denies each and every allegation in the plaintiffs' petition contained except such as are hereinafter specifically admitted.

Second. The defendant admits that on and prior to the 14th day of February, 1901, the said William C. Renfrow was the owner of the real estate described in said petition, but that the said William C. Renfrow thereafter and on the 2nd day of March A. D. 1901, sold the said real estate and each and every part thereof to this defendant, and conveyed the same to this defendant by a Warranty Deed, and that this defendant ever since and has at all times been in the actual possession thereof; a copy of which deed of conveyance made to this defendant is hereto annexed, marked Exhibit "A" hereby referred to and made a part of this answer.

Third. The said defendant specifically denies that the said George J. Shields was, and prior to the date of the purchase alleged in plaintiffs' petition, duly authorized by the said William C. Renfrow to offer for sale and sell said described land or to make any contract of sale therefor whatever, which denial the defendant makes under oath.

45 The said defendant alleges that after said conveyance was made to him by William C. Renfrow he paid the full value and sum of Ten Thousand dollars ($10,000.00) in money, and denies that he entered into any conspiracy or fradulent arrangement with the said William C. Renfrow of any kind or character, or that he had full notice or knowledge of the facts set forth in said plaintiffs' petition, previous to making said purchase.

Fourth: The said defendant for further answer and by way of affirmative relief alleges and avers the facts to be that he is the absolute owner of said land in fee simple, and of each and every part and parcel thereof, and that he has ever since the 9th day of March, 1901, been in the undisputed and sole possession of the said land, and each and every part thereof, and has at all times been in peaceable occupancy of said premises ever since said day, and until on or about the 10th day of January, 1902, when the said plaintiffs unlawfully and wrongfully and forcibly entered upon said premises and commenced the erection of a house thereon, through and by the said plaintiff, Daniel P. Wright; and that the said Daniel P. Wright is now engaged in the act of fencing said premises and erecting other structures thereon. That the said defendant after becoming the owner of said premises as aforesaid, platted the same into an addition to the city of Oklahoma City and laid out thereon streets, alleys, lots and blocks, and caused the same to be surveyed and a plat thereof filed in the office of the Register of Deeds of the County of Oklahoma and Territory of Oklahoma; that the sole object, motive and purpose of the said plaintiffs in their unlawful attempt to seize possession of said property and to devest defendant of his said possession is to harass the said defendant and to prevent him from improving said property as an addition to the City of Oklahoma City, and to interfere with the jurisdiction and authority of this Court to render any judgment in the premises, which will be effective as between the parties in this action and for the purpose of merely harrassing and annoying this defendant.

46 Wherefore the defendant prays that he may have judgment for his costs in this behalf expended and that he may have a decree of judgment against the said plaintiffs and each of them, quieting his title to the premises and each and every part thereof, and that the claim of the said plaintiffs be held for naught and adjudged ineffectual as against the title of the said defendant's property, and that the said plaintiffs and each of them be temporarily enjoined from making or asserting any claim to the title of said premises or any part thereof; and that during the pendency of this action that the plaintiffs be restrained and enjoined from interfering with the said defendant's premises, or forcibly taking away from this defendant any part thereof, or from erecting any fences or other buildings on said premises or otherwise interfering with the use and occupancy of said premises by this answering defendant.

JOHN W. SHARTEL.
Attorney for Defendant R. J. Edwards.

TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

R. J. Edwards being first duly sworn on his oath deposes and says, that he is the defendant named in the above and foregoing answer; that he has read the same and knows the contents thereof; and that the denial of the authority of the said George J. Shields and all of the statements and allegations contained in the Third paragraph of the above and foregoing answer are true in substance and in fact; that the said defendant has at all times since the 10th day of March, 1901, been in the peaceable and open possession of the premises in controvery, and each and every part thereof; that the same was farmed and cultivated by his tenants during the season of 1901 and that no other person or persons have been in possession during such time or any part thereof, except the said defendant and his said tenants until on or about the 10th day of January,
47 1902, when the said plaintiff, Daniel P. Wright, during the absence of the said defendant from the City of Oklahoma City, entered upon said premises and commenced the erection of a house thereon; and that the said Daniel P. Wright is now engaged in fencing and attempting to make other improvements on said premises, and that upon demand of this defendant to said plaintiff to desist from encroaching on said defendant's premises the said plaintiffs refused so to do and informed this defendant that he proposed to go ahead and fence said tract and to subject the same to his possession.

R. J. EDWARDS.

Subscribed and sworn to before me this 15th day of January, A. D. 1902.

NEVA HAINES,
[SEAL.] *Notary Public.*

My commission expires March 28th, 1904.

Warranty Deed.

(Copy.)

Know all men by these Presents: That W. C. Renfrow and Jennie B. Renfrow, husband and wife, of Oklahoma County, Territory of Oklahoma, parties of the first part, in consideration of the sum of Ten Thousand Dollars and no 100 ($10,000) Dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto R. J. Edwards of Oklahoma County, Territory of Oklahoma, party of the second part, the following described real property and premises, situate in Oklahoma County, Territory of Oklahoma, to wit:

A portion of the north half of the northwest quarter (otherwise designated as Lots 3 and 4) of Section four, in Township eleven (11) north of Range Three (3) West Indian Meridian, described as follows, to wit: Beginning at a point where the center of the alley

between Noble and Chickasaw streets in South Oklahoma Addition, Oklahoma City, intersect the east line of said land, said point being nine hundred and ten (910) feet south of the northeast
48 corner of said land, thence due west on a line parallel with the north line of said land to the west line thereof; thence north along said west line five hundred and eighteen (518) feet to the southwest corner of the land deeded to Frances Kelsch; thence due east on a line parallel with the north line of said land twelve hundred twenty-two and forty-three one-hundredths (1222.43) feet, to the southeast corner of the land deeded to Frances Kelsch; thence due north on a line parallel with the west line of said land; three hundred and ninety-two (392) feet to the north line of said land; thence east along the north line of said land five hundred and eighty (580) feet due west of the northeast corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence on a line parallel with the north line of said land one hundred and eighty (180) feet; thence south on a line parallel with the east line of said land three hundred and eighty (380) feet to the southwest corner of the Washington Public School land on said land; thence due east to the east line of said land; thence south along said east line to the point or place of beginning.

Save and except a strip of land two hundred (200) feet wide and three hundred (300) feet long and lying immediately west and adjoining a block of ground owned by Mrs. Meshacle Couch. Also excepting a cerfain piece of ground 50 by 100 feet deeded to C. A. Compton by Bennie L. Cunningham on August 29th, 1898, and recorded in Record No. 7 Quit Claim Deeds, Page 154; also excepting the right of way of the St. Louis and San Franciso Railroad Company together with all improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same. To have and to hold said described premises unto the said party of the second part his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments , mortgages, and other liens and encumbrances of whatsoever nature, except
49 for the taxes for the year 1901 which the grantee hereby assumes and agrees to pay.

Signed and delivered this 2nd day of March, 1901.

W. C. RENFROW.
JENNIE B. RENFROW.

$10 in Rev. Stamps, attached and duly cancelled.

STATE OF MISSOURI, *Jasper County, ss:*

Before me Jno. C. Keenan, a notary public, in and for said County and State on this 2nd day of March, 1901, personally appeared W. C. Renfrow and his wife Jennie B. Renfrow to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

[SEAL.] JNO. C. KEENAN,
Notary Public.

My commission expires Oct. 31, 1901.

Exhibit "A."

50 Endorsements on back as follows: Warranty Deed. W. C. Renfrow and wife, Jennie B. to R. J. Edwards.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 8th day of March, 1901, at 4:58 o'clock p. m. and recorded in Book 20 of Deed Record, at page 157.

C. J. BOWMAN,
Register of Deeds.

Endorsed: #2856. Oscar D. Halsell *et al. vs.* Wm. C. Renfrow *et al.* Separate Answer of R. J. Edwards. Filed Jan. 15, 1902. B. D. Shear, Clerk, By M. McKinley, Deputy.

51 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Amendment to Petition.

In the District Court of said Territory, Within and for said County, in the Third Judicial District.

LEONIDAS L. LAND, OSCAR G. LEE, OSCAR HALSELL, DAN WRIGHT and JEAN H. EVEREST, Plaintiffs,
vs.
W. C. RENFROW and R. J. EDWARDS, Defendants.

Come now the said plaintiffs, and with leave of court had therefor, amend their present and amended petition by adding to paragraph numbered 11 thereof the following, to wit:

That after the payment of said Five Hundred dollars ($500) and the sending of said telegram by the said George J. Shields, and the receipt thereof by the said W. C. Renfrow; and after the sending of said telegram of confirmation of said Renfrow and the receipt thereof by said Shields and the plaintiffs had full knowledge thereof; and after the execution of said deed first above mentioned by said Renfrow and his wife and plaintiffs has full knowledge of such execution; and while said $500.00 was retained by the said Renfrow and before said land was conveyed by said Renfrow to the defendant R. J. Edwards, and for the purpose of carrying said contract into execution, and by virtue thereof, and with the full knowledge and express consent of said Renfrow as to both the fact and purpose thereof, the plaintiffs went upon said land and exercised acts of

ownership thereon and tore down and destroyed fences and improvements found on said land and did such other acts which would be trespasses and wrongs against the owner and occupants
52 thereof except as rendered lawful by the ownership of said plaintiffs under their said contract of purchase so made and entered into with the said defendant Renfrow and his consent to the doing of such acts.

LEONIDAS L. LAND,
OSCAR G. LEE,
OSCAR HALSELL,
DAN WRIGHT AND
JEAN H. EVEREST, *Plaintiffs.*
By JEAN H. EVEREST,
HOWARD & AMES,
Their Attorneys.

Endorsed: In the District Court. Oscar Halsell *et al. vs.* W. C. Renfrow *et al.* Amendment to petition.

53 *Separate Answer of William C. Renfrow.*

In the District Court of the County of Oklahoma and Territory of Oklahoma.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST, Plaintiffs.
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Comes now the defendant, William C. Renfrow, and for his separate answer to the amended petition of plaintiffs filed herein says:

1st. That he denies each and every allegation in the plaintiffs' petition contained, except such as are hereinafter specifically admitted.

2nd. This defendant specifically denies that any contract or agreement for the sale of the real estate described in plaintiffs' petition, or interest therein, between this defendant and said plaintiffs, or either of them, was ever reduced to writing and subscribed by the parties thereto. And this defendant further denies that any memorandum of such an agreement was ever made in writing and signed by this defendant.

3rd. This defendant admits that on and prior to the 14th day of February, 1901, he was the owner of the real estate described in said petition and alleges that thereafter and on the 2nd day of March, 1901, for a valuable consideration he sold the said real estate and each and every part thereof to the defendant, R. J. Edwards, and conveyed the same to him by a warranty deed, a copy of which is annexed to the separate answer of R. J. Edwards filed in this case, marked Exhibit "A" and is hereby referred to and made a part of this answer.

54 4th. This defendant specifically denies that the said George J. Shields was and prior to the date of the purchase alleged

in plaintiffs' petition duly authorized to offer for sale and sell said described land or to make any contract of sale therefor whatever.

SHARTELL & WELLS,
Attorneys for Defendant William C. Renfrow.

TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

John W. Shartell, being first duly sworn, on oath deposes and says: that he is attorney for the defendant, William C. Renfrow, in the above entitled case; that he has carefully read the 4th paragraph of the above answer; and that the statements therein contained are true to the best of his knowledge, information and belief.

Affiant further says that the defendant, William C. Renfrow, is a non-resident of the Territory of Oklahoma, and absent therefrom.

JOHN W. SHARTELL.

Subscribed and sworn to before me this 27th day of January A. D. 1902.

[SEAL.]

NEVA HAINES,
Notary Public.

My commission expires March 28th., 1904.

Endorsed: #2856. O. D. Halsell *et al. vs.* William C. Renfrow *et al.* Separate answer of William C. Renfrow. Filed Jan. 28, 1902. B. D. Shear, Clerk, by M. McKinley, deputy.

55 Be it remembered that on the 1st day of May, A. D., 1903, the same being one of the days of the regular April, 1903, term of the District Court of the County of Oklahoma, Territory of Oklahoma: Present Honorable B. F. Burwell, judge, B. D. Shear, clerk; Public proclamation of the opening of Court having been ordered and given, the following, among other proceedings are had:

2856.

O. D. HALSELL, *et al.*
vs.
WM. C. RENFROW, *et al.*

On application, leave is hereby given plaintiffs to file reply out of time.

56 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Reply.

In the District Court of said Territory within and for said County in the Third Judicial District.

OSCAR D. HALSELL *et al.*, Plaintiffs,
vs.
WILLIAM C. RENFROW *et al.*, Defendants.

Comes now the plaintiffs in the above entitled action, and for reply to the separate answer of R. J. Edwards, defendant, say they do and each of them does deny each and every allegation in the said answer contained.

Wherefore they pray judgment, etc.

OSCAR D. HALSELL *et al.*,
Plaintiffs.
By HOWARD AND AMES,
Their Attorneys.

LEONIDAS L. LAND.
OSCAR G. LEE.
DAN WRIGHT.
JEAN H. EVEREST.

Endorsed: #2856. In the District Court. Oscar D. Halsell *et al. vs.* Wm. C. Renfrow *et al.* Reply. Filed Mch. 3, 1902. B. D. Shear, clerk.

57 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Reply.

In the District Court in and for Said County.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Come now the plaintiffs in said cause, and for reply to the separate answer of the defendant, William C. Renfrow say, that they deny each and every allegation in said answer contained.

Wherefore they pray judgment as in their amended petition.

J. H. EVEREST AND
HOWARD & AMES,
Attorneys for Plaintiffs.

Endorsed: # 2856. O. D. Halsell *et al. vs.* W. C. Renfrow *et al.* Reply; filed in District Court, Oklahoma County, O. T., Mar. 20, 1902. B. D. Shear, Clerk, By I. M. Holcomb, Deputy.

58 TERRITORY OF OKLAHOMA, *Oklahoma County*, ss:

Reply.

In the District Court in and for Said County.

OSCAR D. HALSELL ET AL., Plaintiffs,
vs.
WILLIAM C. RENFROW ET AL., Defendants.

Come now the plaintiffs in the above entitled cause and for reply to the separate answer of defendant, William C. Renfrow, filed herein, say, and each for himself says:

That said plaintiffs deny each and every material allegation in said separate answer contained.

HOWARD & AMES,
Attorneys for Plaintiffs.

Endorsed: #2856. Oscar D. Halsell *et al. vs.* William C. Renfrow *et al.* Reply Filed May 1, 1903, B. D. Shear, Clerk.

59 Be it remembered that on the 21st day of April, A. D., 1903, the same a regular juridical day of the April, 1903, term of the District Court in and for Oklahoma County, Territory of Oklahoma; Present Honorable B. F. Burwell, judge, B. D. Shear, clerk. Public proclamation of the opening of Court having been ordered and given the following among other proceedings are had:—

2856.

OSCAR D. HALSELL ET AL., Plaintiffs,
vs.
WM. C. RENFROW ET AL., Defendants.

Ordered that this cause be and it is set for trial on the 9th day of May, A. D., 1903, at 9 o'clock A. M.

60 TERRITORY OF OKLAHOMA, *Oklahoma County*, ss:

Affidavit.

In the District Court of said Territory, within and for said County.

OSCAR D. HALSELL, LEONIDAS L. LAND, DANIEL P. WRIGHT, OSCAR G. LEE, and JEAN H. EVEREST, Plaintiffs,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Leonidas L. Land, Daniel P. Wright, and Oscar G. Lee, all of lawful age, each for himself and not for another, being duly sworn, says on his oath, that he is one of the defendants in the above entitled cause; that he cannot have a fair and impartial trial of said cause be-

fore the Honorable B. F. Burwell, the presiding judge of the said Court, because he says the presiding judge is biased and prejudiced in said cause.

LEONIDAS L. LAND.
DANIEL P. WRIGHT.
OSCAR G. LEE.

[SEAL.] Subscribed in my presence and sworn to before me this 20th day of May, 1903.

B. D. SHEAR, *Clerk.*

Endorsed: 2856. In the District Court. Oscar D. Halsell *et al.* *vs.* William C. Renfrow et al. Affidavit Filed May 21, 1903. B. D. Shear, Clerk.

61 Be it remembered that on the 21st day of May, A. D., 1903, the same being one of the regular juridical days of the April, 1903 Term of the District Court of the County of Oklahoma, Territory of Oklahoma. Present, Honorable B. F. Burwell, judge, B. D. Shear, clerk, Public proclamation of the opening of court having been ordered and given the following, among other proceedings are had:—

2856.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST, Plaintiffs,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

This cause coming before the Court on the motion of the plaintiffs for a change of judge herein and the Court being advised it is ordered that said motion be and the same is hereby sustained and a change of judge in this cause is hereby granted.

62-64 Be it remembered that on the 23rd day of May, A. D., 1903, the same being one of the juridical days of the regular April 1903 Term of the District Court of the County of Oklahoma, Territory of Oklahoma. Present, Honorable B. F. Burwell, judge, B. D. Shear, clerk. Public proclamation of the opening of Court having been ordered and given, the following among other proceedings were had: —

2856.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

This cause coming on in its regular order the parties hereto are present and represented by their respective counsel and now in open court hereby waive trial by jury in this cause.

65 In the Supreme Court of the Territory of Oklahoma in Vacation.

Whereas, it has been made to appear that a change of Judge has been ordered in a number of causes now pending in the District Court of Oklahoma County, in the Third Judicial District, and that the Hon. B. F. Burwell, presiding Judge of said Court is disqualified from trying said causes, and it further appearing that said presiding judge will be absent from his District on official business during the present term of the District Court of said County,

It is now hereby ordered that Hon. C. F. Irwin, Associate Justice of the Supreme Court of the Territory of Oklahoma, be and he is hereby designated to try, hear and determine any of said causes now pending in the District Court of Oklahoma County, wherein a change of judge has been ordered, and he is further designated to hold the district Court of the said Third Judicial District during the absence of the regular presiding judge from his said District, and to try, hear and determine all matters which may properly come before said Court or Judge.

It is further ordered: That the clerk transmit a duly certified copy of this order, attested by his official signature and the seal of said Supreme Court, to said Associate Justice Irwin, the Clerk of the Second Judicial District of said Territory, and the District Courts of said Third District.

In witness whereof, I have hereunto set my hand this 23rd day of April, 1903.

JNO. H. BURFORD, *Chief Justice.*

Attest:

BENJ. F. HEGLER,
Clerk Supreme Court.

[SEAL.]

66 UNITED STATES OF AMERICA, *Territory of Oklahoma, ss:*

In the Supreme Court.

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of the order of the Chief Justice of said Supreme Court, made in vacation, on the twenty-third day of April, 1903, assigning Associate Justice Irwin to the Third District, as the same appears on file and of record in my office.

In wintess whereof, I hereto set my hand and affix the seal of said Supreme Court, at Guthrie, this 24th day of April, A. D. 1903.

[SEAL.]

BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed: Order assigning Judge Irwin to 3rd District. Filed April 24, 1903. B. D. Shear, Clerk, By Will H. Clark, Deputy.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

I, B. D. Shear, Clerk of the District Court in and for Oklahoma County, Territory of Oklahoma, do hereby certify the above and foregoing to be a full, true, correct and complete copy of the original order assigning judge as the same appears on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 8th day of January, 1904.

67 And thereupon the plaintiffs presented their application and affidavits for a continuance, which the Court announced sufficient for that purpose, and to avoid said continuance the defendants consented that said affidavits should be received in evidence according to law.

68 TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

Transcript of Evidence.

In the District Court of the Third Judicial District of the Territory of Oklahoma, sitting within and for the County of Oklahoma.

No. 2856.

OSCAR D. HALSELL, *et al.*, Plaintiffs,
vs.
WILLIAM C. RENFROW, *et al.*, Defendants.

And now on this the 27th day of May, A. D. 1903, the same being one of the days of the regular April, 1903, term of said Court, the above entitled cause coming on to be heard before Hon. Clinton F. Irwin, presiding judge, at Oklahoma City, in said County, and the plaintiff being present in person and by their attorneys, Howard & Ames, and the defendants being present in person and by their attorneys, Shartel, Keaton and Wells, the following proceedings were had, to wit:—

69 Mr. HOWARD: May it please the Court, this is an action for the specific performance of a contract to sell real estate. Previous to February 14, 1901, William C. Renfrow, one of the defendants, was the owner of a tract of land comprising about 40 acres, known as the Cunningham tract, adjacent to Oklahoma City. Sometime previous to this suit, he placed this tract of land with a number of real estate agents in Oklahoma City for sale, among them G. B. Stone, Owen & Welsh and George J. Shields, giving to each of the three the same specific instructions as to the price and terms of sale. About the 14th day of February, 1901, Dan Wright, one of the plaintiffs, called upon Mr. Shields and had a conversation concerning this tract of land, and they practically came to an understanding, but did not make a trade. Afterwards Dan Wright and L. L. Laud, another of the plaintiffs, went to the office of Mr. Shields on the 14th of

February, 1901, and bought the land from him for themselves and these other plaintiffs agreeing to pay therefor the sum of $10,000.00 cash, paying $500, and the balance to be paid upon the delivery of the deed. As a part performance of that contract Mr. Land wrote his check payable to the order of Mr. Shields for the $500. Mr. Shields endorsed that check, collected the money, and he or Mr. Renfrow, or both of them, still have that money; it has never been returned, or any offer made to return it, and nothing has been said about its return, but it has been, at all times retained. On the same day Mr. Shields sent a telegraphic message to Mr. Renfrow, one of the defendants, stating to him that he had sold the Cunningham tract for $10,000 cash, $500 forfeit. On the same day Mr. Renfrow answered that telegram, stating that he confirmed the sale of the Cunningham tract for $10,000, cash, $500 forfeit. At this same time or immediately afterwards Mr. Shields permitted the plaintiffs to take
70 possession of the land and treat it as if they owned it, and they did so. A few days afterwards Mr. Renfrom came to Oklahoma City with the deed to the premises already prepared (or I think it was prepared) making a conveyance to Mr. Halsell, one of the plaintiffs; and when he came, the plaintiffs or some of them, met him, told him what they were doing with reference to exercising acts of ownership over the land, and he told them that it was all right to go ahead, that he had come to close up the trade and that he would stay here until it was closed up, and for them to proceed with their acts of ownership. Under that authority they had the land surveyed. They had a preliminary or original plat of the land made; they sold parcels of it, and received money upon the sale; they tore down the fencing and took away the posts, leaving the wire upon the ground, from whence it was taken by some one to them unknown. Shortly after they had taken this action, an individual whose existence was unknown to them appeared upon the scene and claimed that he had a lease upon the land, and he claimed that he owned this fence and these posts; and they raised the question with Mr. Renfrow, and there was a delay about the closing of the sale. It also appeared that there was a small tract of land, which was included in the conveyance when Mr. Renfrow acquired this tract of ground, that he did not own, as it had been conveyed before he acquired it. As to that part of it the parties agree that the value of it was $200, and that it should be deducted from the purchase price. But this man claiming the lease was a different question. They tried to find some way to dispose of that matter, but no final and definite conclusion was reached. Mr. Renfrow left Oklahoma City, and when he returned to his home in Joplin Mo., he sent this deed, or another one. The deed
71 which he sent was different*ly* only from the one which he had when he was here, in that, in the description, this small tract of land which I have mentioned, was omitted. He sent it to the Western National Bank, and he drew a draft on the plaintiffs, or on Mr. Halsell, as representing them, for the amount of $9,500., instructing the bank to receive that sum and to deliver the deed. The plaintiffs called at the bank and found the deed there. The deed itself was satisfactory to them. They tendered the amount, less the

$200 agreed upon as the value of the small tract of land, and requested the delivery of the deed. The bank, acting under the instructions received, simply returned the deed to Mr. Renfrow, and Mr. Renfrow, about that time, made a deed of conveyance to R. J. Edwards, the other defendant in this case, for the express consideration of $10,000. As to the facts with reference to the Edwards deal, it will appear that Mr. Edwards stated to one of these plaintiffs, soon after they had made the trade with Mr. Renfrow, that they had got ahead of him twenty four or forty eight hours; that he had expected to buy this land himself. It will appear that he stated to Mr. Shields, the agent of Mr. Renfrow, that if any of these people, for any reason, did not carry out their contract, why he was ready to take it up. It will appear that the plaintiffs went to Mr. Edwards and upbraided him with trying to prevent the execution of the contract which they had made with Mr. Renfrow, and that he denied it, and that words passed with reference to it. It will appear that he afterwards had a conversation with another one of the plaintiffs, and asked him how he was getting on selling his town lots; it will appear also that, on the day on which this suit was filed, and five or ten minutes before it was filed, he had a conversation with one of the plaintiffs with
72 reference to the matter, in which he was advised that suit in a few minutes would be filed, and that afterwards, as quick as it could be done, he placed the deed which he had received from Mr. Renfrow upon record.

73 Mr. HOWARD: We first offer in evidence the affidavits made for a postponement of the hearing of the case:

(Reads:) O. G. LEE, of lawful age, being duly sworn, says on his oath——

Mr. SHARTEL: We desire to offer an objection to certain parts of that evidence.

(Cont.): —that he is one of the plaintiffs in the above entitled cause; that George J. Shields is a necessary and material witness on behalf of the plaintiffs in said cause; that the said George J. Shields resides at Oklahoma City, said county and territory; that said witness has been absent for about one week; that the absence of said witness is not due to the procurement, knowledge or consent of the affiant or any of said plaintiffs; that the said witness is somewhere in the Territory of New Mexico temporarily; that affiant or none of said plaintiffs were not aware of the absence of said witness until after this cause was set for trial; that plaintiffs caused a subpœna to issue for said witness, which was returned "not found" after this case was set for trial, and thereafter caused an alias subpœna to issue for him, but that he is absent from said county temporarily; that the plaintiffs will be able to secure the attendance of said witness as soon as he returns to Oklahoma City and affiant believes he will return within thirty or sixty days; that since learning of his absence there has been no time to communicate with him or to take his deposition; that with due diligence the plaintiffs have been unable to obtain his attendance or to secure his testimony, having relied upon the

fact that he resided in said County and that he has been continuously within the jurisdiction of said court until within the last six
74 or eight days; that affiant and plaintiffs believe the witness will prove the following facts, which they believe to be true, to-wit:

That the said George J. Shields at all the times mentioned in the petition of the plaintiffs was engaged in the real estate business at Oklahoma City, said county, selling real estate for commissions; that the defendant, William C. Renfrow, listed and placed with the said George J. Shields the land in controversy for sale and authorized him——

Mr. SHARTEL: Wait a minute; the next words, "and authorized him to sell the same," we object to as incompetent, irrelevant and immaterial, and as being a conclusion of the witness and not a statement of fact. Objection overruled. Defendants except.

HOWARD (cont.): That on February 14th, 1901, the said George J. Shields sold the land in controversy to the plaintiffs, making the contract of such sale with L. L. Land and at that time received of the said L. L. Land for the plaintiffs the sum of $500.00 as a part of the purchase price for said land; that he was authorized by said Renfrow to make the sale and to receive such payment, and that he has ever since retained and still retains the said $500.00; that he has never——

Mr. SHARTEL:—Wait, wait. We object to that sentence just read that he was authorized by said Renfrow to make the sale, and to receive such payment, as incompetent, irrelevant and immaterial, and as a conclusion of the witness, not stating the manner of his authority, whether verbal or in writing, and not being a statement of fact. Overruled. Defendant excepts.

HOWARD (cont.):—that he has never returned any part thereof or offered to do so, or been authorized or directed by the said William C. Renfrow to repay the same or any part thereof; that immediately upon making such sale and receiving such payment he sent a telegram to the said William C. Renfrow advising him that
75 he had made such sale; that said telegram is in the words of——

Mr. SHARTEL: We object to any statement by the witness of the contents of the telegram, as not the best evidence.

The COURT: Objection sustained. I presume the contents of the telegram would be the best evidence.

Mr. HOWARD: The contents are here; I just used that language to identify it. I will now state the telegram.

Mr. SHARTEL: We object to a statement of the telegram; the telegram is the best evidence. Objection sustained. Plaintiffs except.

HOWARD (cont.):—that said telegram is in the words of the exhibit as set forth in the petition of the plaintiffs, to wit——

Mr. SHARTEL: We object to a statement of the contents of the telegram. Objection sustained. Plaintiffs except.

HOWARD (cont.):—that immediately thereafter he received from said William C. Renfrow a telegram duly subscribed by him which is in the words of Exhibit C attached to the petition of plaintiffs, by which the said William C. Renfrow——

Mr. SHARTEL: We object to the statement of the contents of that telegram by the witness. Objection sustained. Plaintiff excepts.

HOWARD (cont.):—by which the said William C. Renfrow, in writing subscribed by him, ratified and confirmed the said sale so made; that with the authority and under the direction of the said William C. Renfrow, he authorized and directed the plaintiffs——

Mr. SHARTEL: I believe that I will object to all that again as being a conclusion of the witness and incompetent. Objection overruled. Defendants except.

HOWARD (cont.):—to take possession of the premises in controversy, and to survey the same and sell a portion thereof, and
76 tear down fences thereon and exercise acts of ownership and proprietorship in reference thereto, which the said plaintiffs did——

Mr. SHARTEL: We object to the statement as to the plaintiffs taking possession and doing acts of proprietorship, as being a statement of a conclusion and not a statement of fact by the witness. Objection overruled. Defendants except.

Mr. HOWARD (cont.):—that the $500.00 so paid was paid by the check of said L. L. Land, which check was endorsed and subscribed by the said George J. Shields, which signing and subscription was ratified in writing by the said Renfrow;——

Mr. SHARTEL: We object to the statement of the contents of the check or what he did with it.

The COURT: I think he may state what he did with it, but the contents is objectionable.

Mr. HOWARD (cont.):—that the said check is the same as referred to in the petition of the plaintiffs——

Mr. SHARTEL:—we also object to the statement that the signing and subscription was ratified in writing by the said Renfrow, as incompetent, irrelevant and immaterial, and as a conclusion of law and not a statement of fact. Objection sustained. Plaintiffs except.

HOWARD (cont.):—and that the facts in reference to such check and payment set forth in said petition, are true——

Mr. SHARTEL: We object to the that statement "the facts in reference to such check and payment set forth in said petition, are true," as being a conclusion and not a statement of fact. Objection overruled. Defendants except.

HOWARD (cont.):—that the telegram above mentioned was signed by the said William C. Renfrow is in the possession of said George J. Shields and the plaintiffs are unable to produce the same in the

absence of said George J. Shields, but by securing the testi-
77 mony of said witness said telegram will also be secured.
(Signed) O. G. LEE.

Duly subscribed and sworn to. The telegram is: "Joplin, Mo., Feb. 14, 1901. J. J. Shields, Oklahoma City, O. T. I confirm sale by you Ten Thousand cash, Five Hundred forfeit. 1:17 P. M. I. R. Stamp 1 cent. W. C. Renfrow."

Mr. HOWARD: And here is an additional affidavit by L. L. Land:— (Reads) L. L. LAND, of lawful age, being duly sworn, says on his oath that he is one of the plaintiffs in said cause, that the witness, George J. Shields, if present, in addition to the facts set forth in the affidavit of O. G. Lee, would testify that after the plaintiffs had bought the land in controversy, and affiant had paid $500 of the purchase price thereof to said Shields, the said Shields had a conversation with the defendant R. J. Edwards, in which said Edwards said to Shields, referring to the plaintiffs and their purchase of said land from said Renfrow: "If any of them fellows fail to come up, I am ready to take up the trade," meaning that if the plaintiffs did not keep their contract, he would buy the land; that said Shields said in reply to said Edwards that there was no danger; that the said sale was made and the parties had the money and would carry it out; all of which was long prior to the purchase or pretended purchase of said land by said Edwards.

The affiant says that he believes said facts to be true.
(Signed) L. L. LAND.

78 O. N. DALEY was thereupon called to the witness stand by the plaintiff, and gave the following testimony under oath:

By Mr. HOWARD:

Q. What is your business?
A. Manager of the Western Union Telegraph.
Q. At Oklahoma City?
A. Yes, sir.
Q. Have you in your possession a telegram signed or received by George J. Shields to W. C. Renfrow, or from W. C. Renfrow to George J. Shields, dated February 14, 1901?
A. No.
Q. Is there any such telegram in your possession?
A. Well, the files of February 14, 1901, have been destroyed.
Q. Have been destroyed,—the whole file?
A. The whole file.
Q. And those telegrams have been destroyed?
A. All messages in writing we retain only six months.

11 A. M. Whereupon Court adjourned until 2 P. M.
2 P. M. Court convened pursuant to adjournment.

Mr. HOWARD: If the Court please it appears that Mr. Renfrow has not arrived, and we would like very much to examine him first. It is

agreed that the following documentary evidence shall be introduced first, in order to save time, and that then the oral evidence shall be introduced tomorrow morning, in order to await the coming of Mr. Renfrow.

Mr. HOWARD: We desire to offer in evidence telegram, in the following words:

"OKLAHOMA CITY, O. T., *Feb.* 14, 1901.

"To W. C. Renfrow, Joplin, Mo.:

"Have sold the forty acres Ten Thousand Cash Five Hun-
79 dred forfeit. Answer. 11:31. U. S. Rev. 1 cent.

"GEORGE J. SHIELDS."

Mr. SHARTEL: It is admitted by the defendants that the telegram was filed for transmission on the date it bears, and was transmitted and delivered to the defendant, W. C. Renfrow at Joplin, Mo., on the same date. Now, we object to the admission of the telegram or document as being incompetent, irrelevant and immaterial, and as failing to prove or tend to prove any contract of sale.

Objection overruled. Defendant excepts.

80 Mr. HOWARD: We offer in evidence the following telegram:

"JOPLIN, Mo., *February 14th*, 1901.

"George J. Shields, Oklahoma City, O. T.:

"I confirm sale by you, Ten Thousand Cash, five hundred forfeit. 1:17 P. M. I. R. Stamp 1 cent.

"W. C. RENFROW."

Mr. SHARTEL: It is admitted that the defendant W. C. Renfrow filed a message in the words of the copy on February 14, 1901, at Joplin, Mo., and that the same was transmitted and delivered by the telegraph Company, on the same day, to the party to whom the same was addressed, George J. Shields, at Oklahoma City; but the defendant objects to the introduction of the evidence as being incompetent, irrelevant and immaterial, and insufficient as a memorandum within the statute of frauds.

Objection overruled. Defendant excepts.

Mr. SHARTEL: And we make the formal objection to the check, on the ground that it has been altered.

The COURT: Let it go in under objection. Defendants except.

Mr. HOWARD: We wish to offer the simple original check, as it was originally written, received, endorsed and paid, the interlineation as set forth in the petition—that part of the check is not offered; across the end is printed: "G. J. Shields, real estate and rental agent." "Cancelled. L. L. L." which are the initials of the maker. "Oklahoma City, Oklahoma, 2/14/1901. State National Bank; pay to the order of George J. Shields $500 Five Hundred Dollars. (Signed) L. L. Land. Endorsed on back G. J. Shields."

Mr. SHARTEL: The defendants also wish to insert the objection

made to the other documents, as being insufficient as a memorandum under the statute as frauds.

The COURT: Let it be admitted under objection.

Defendants except.

Mr. HOWARD: It is admitted by the defendants that the letter following was written by the defendant W. C. Renfrow, and sent through the mails at the time that it bears date, and to the person to whom it is addressed. We offer in evidence the following

81 letter:

Mr. SHARTEL: The defendants object to the letter as incompetent, irrelevant and immaterial and as having no bearing on the issue in this case.

(The Court examines said letter) Objection overruled.

Defendants Except.

Mr. HOWARD: The letter is as follows: "Keystone Hotel, Joplin Mo. ——"—I will have to introduce the envelope to show the date Mr. Shartel, unless you will admit it.

Mr. SHARTEL: It is something I don't know anything about. I there is anything wrong about it I will admit it subject to that striction.

Mr. HOWARD: Well, the date is 2 9/1901. The letter is as follows

"Mr. G. B. Stone, O. City, O. T.:

"DEAR SIR: When I furnished you with a list of my properties gave you prices also And unless you can sell for same, it would useless to waste money on telegrams in hopes of a change in price I gave Messrs. Owen & Welsh, Mr. Shields and yourself the same list and the same terms, and should I accept more favorable terms of sa from you I would not be treating them right. Ten Thousand Dollar is the least money that would purchase the Cunningham tract Should a person prefer to pay two-thirds cash, and the balance in s or twelve months with 10% I would accept that. O. & W. and Mr. S understand it that way, and I presumed that you did until I receive your two telegrams. I leave for West Plains this P. M. and return here Tuesday or Wednesday.

"Respectfully, W. C. RENFROW."

Mr. HOWARD: We now offer in evidence letter dated 2 14 0 addressed to Oscar Lee.

Mr. SHARTEL: Objected to as incompetent, irrelevant and imma terial and not having any tendency to prove a written contract.

The COURT: Is that one of the letters that the hand writing admitted.

Mr. HOWARD: Yes sir, it is similar. (Court examines same.)

Objection overruled. Defendants except.

82 Mr. HOWARD: The letter reads as follows: "Keystone Hote Joplin, Mo., 2/14. Mr. Oscar Lee, O. City O. T. Dear Si Your letter of the 10th was received yesterday. But as I was expec ing a telegram today concerning the property about which yo wrote I waited to hear from my party. And I have done so, and

have just wired my acceptance of proposition. Very Truly, W. C. Renfrow." The envelope shows the date to be 1901.

Mr. HOWARD: We now desire to offer in evidence a letter dated February 27th, 1901, by the plaintiff O. D. Halsell, and addressed to the defendant, W. C. Renfrow, at Joplin, Mo. What is your objection to that?

Mr. SHARTEL: None whatever.

Mr. HOWARD: —which reads as follows: "Oklahoma City, O. T., 2 27 01. Mr. W. C. Renfrow, Joplin, Mo. Dear Sir: I am in receipt of your letter of February 25th——

Mr. SHARTEL: —and in addition to that I will admit that the letter was written in fact by the Plaintiff O. D. Halsell, and was received by the defendant, W. C. Renfrow, in due course of mail.

Mr. HOWARD (cont.): "Oklahoma City, O. T., 2 27 01, W. C. Renfrow, Joplin, Mo. Dear Sir: I am in receipt of your letter of February 25th in which you call my attention to the fact that you have sent deed for Cunningham tract of land to Western National Bank, and that upon payment of $9,500 placed to your credit and $500 placed to the credit of George J. Shields, same will be delivered to me. Will say that I today tendered to Mr. F. R. Holt, cashier of the Western National Bank, $9,300 in *cash*, together with $500, held by George J. Shields, your agent, and the $200.00 you agreed to allow for land sold off of said tract, would make $10,000.00, which you were to receive for the tract of land known as the Cunningham land.

I requested Mr. Holt to deliver me deed and possession of land, in consideration of tender of this money, all of which he refused to do. We have certainly lived up to our part of the contract and will just as surely expect you to do the same. You could not, under any circumstances expect us to deliver you over the money for this land without giving us possession, neither would you buy a tract of land of me, or anyone else, with any cloud over the title. We stand ready to fulfill our part of the contract to the letter, without any variations, and I take it you are a business man and an honest man and will certainly fulfill yours. Yours Truly, O. D. Halsell."

Mr. HOWARD: We wish next to offer in evidence a letter dated Joplin, Mo., March 1, 1901, addressed to Mr. Oscar D. Halsell, and signed W. C. Renfrow; any objection to that, Mr. Shartel?

Mr. SHARTEL: On behalf of the defendant Edwards, we object to that as incompetent, irrelevant and immaterial, it having transpired that Edwards had bought the land.

Objection overruled. Defendants except.

Whereupon Mr. Howard reads the following letter:—

"JOPLIN, Mo., *March* 1, 1901.

"Mr. Oscar D. Halsell, Oklahoma City, O. T.

"MY DEAR SIR: Your letter of the 27th just received, and I note what you say about tendering Mr. Holt, cashier of the Western National Bank of your city, $9,300 in cash, and $500 held by Mr. George J. Shields, my agent, and that you requested Mr. Holt at

the time to deliver you the deed and possession of what is known as the Cunningham tract.

Now, Mr. Halsell, possession is what caused me so much disappointment and prevented me from closing the deal with you the day after my arrival in Oklahoma City, and the question of possession and how to obtain it was gone over and fully discussed in your presence and the presence of your associates by my attorney, Mr. Shartel, at his office, who expressed doubt at the time about getting possession at a very early date, provided the lessee should give an appeal
84 bond. After going over the matter, as I supposed satisfactory to all, I tendered you my deed with such possession as I could give at the time, and which was not satisfactory to you and associates, and it was finally agreed to leave the matter with Mr. Everest to decide, and who came down to see me at the Lee Hotel that evening, and in endeavoring to get at a satisfactory understanding of the matter, he informed me that he had decided to give me thirty days to perfect my title. I remarked "Suppose that I cannot perfect my title in thirty days, then what?" His reply was, "That it would be a question of damages to be determined later." I was not pleased with his demands, especially as I had no desire to throw the trade so by the time I had reached Joplin the following day I had made up my mind to give you the second opportunity of taking the property with such title and possession as I got when I became the purchaser of the same, and if not satisfactory to you I would call the trade off, all of which I have done.

Yesterday I had the same offer as made by Mr. Shields for you, except that the party agreed to take chances in obtaining possession himself. I wired that I would accept his proposition, and in case he makes satisfactory arrangements with me this week I shall close the deal with him.

I regret that I found matters in such a shape on my arrival there which prevented me giving you immediate possession of the property, as it was my intention and desire to do, and I wish you could have felt safe in accepting the deed with chances of possession later on, as I agreed to bear all expenses of a suit for possession. I could only offer you such title as I had, and I gave you the opportunity of taking that, and which you would have been as safe in accepting as any one else.

As to the $200 referred to, I would have arranged that by taking a quit claim deed back from you and paying you $200 as a consideration, with the hope that Mr. Cunningham would reim-
85 burse me to that extent, and which I believe he would have done.

I especially note what you say about your being ready to fulfill your part of the contract to the "letter," and *without* "variations," and as an honest man and a business man expected me to do the same. No one can know better than yourself how easily a person can unexpectedly be placed in a position where it is impossible for him to carry out a contract to the "*letter*," and without "variations." You have doubtless made many sales to your customers to deliver goods at a certain price, and because of some unforeseen rise in the

price, or other causes you refuse to fill or ship the order. You well know that it was impossible for me to put you in possession, and my failure to do so was no greater disappointment to you than myself, and I regret exceedingly the termination of this matter.

"Most Respectfully, W. C. RENFROW."

2:30 P. M. Court adjourned until 9 A. M. tomorrow morning.

9 A. M. MAY 28TH, 1903.

Court convened pursuant to adjournment, and all parties being present (except W. C. Renfrow) the trial of the above entitled cause was proceeded with as follows:—

R. J. EDWARDS was thereupon sworn by the plaintiff and testified as follows:

By Mr. HOWARD:

Q. Mr. Edwards, I will ask you what this is, if you please? (handing witness paper.)

A. It is a deed from Governor Renfrow and his wife to myself.

Q. To the land in question in this case?

A. Yes, sir.

Q. When and where did you first see that instrument?

A. I got this from Governor Renfrow at Joplin.

86 Q. When and where did you first see that instrument?

A. At Joplin at the time he delivered it to me.

Q. Did you see it at any time before he delivered it to you?

A. No sir.

Q. You know what this is, don't you?

A. Yes, it is a warranty deed.

Q. You know what it was before it was a deed to you, don't you?

A. No sir, it is a warranty deed.

Q. You don't know; you don't know what it was before you got it?

A. Why, it was a blank piece of paper I suppose.

Q. Well, immediately before it was made to you do you know what it was.

A. No sir.

Q. You do not?

A. No sir.

Q. Look in there (indic) and see if you find anything to indicate what it was before it was a deed to you. (Witness complies) You know now what it was, do you not?

A. I don't know that I know; what do you mean Mr. Howard?

Q. Well you know that this is the deed that Mr. Renfrow made to Mr. Halsell, do you not.

A. No sir.

Q. Don't you know that, *now?*

A. No sir, I don't know it now.

Q. Well, you can look and see his name there under yours, can't you?

A. I see a name there.

Q. You never heard of that before?
A. No sir.
Q. Not from any source?
A. Not this particular deed; not that I know of, no sir.
87 Q. You see that the date has been changed on the deed down there, do you not,—away down here?
A. Yes sir. I see an erasure is there, I see something has been rubbed out there. I see "sell" and I see down here where the date has been erased.
Q. Now turn it over; you see where the revenue stamps have been erased; you see the mucilage there where they have been taken off?
A. I see where there is somethng there, yes sir.
Q. You say that you did not know until now that it was the deed that was made to Mr. Halsell?
A. I do not know it now.
Q. Nobody ever called your attention to it—suggested it to you?
A. Well I may have thought so,—but to say that I know,—I do not know.
Q. Your attention has been called to it has it not?
A. Since I have had it, yes.
Q. And it was not at the time it was made out?
A. No sir.
Q. Where were you when it was made?
A. I was in Joplin at the Keystone Hotel.
Q. Where was Mr. Renfrow?
A. At Joplin; I suppose he was living there. He and his wife were there.
Q. In the same hotel where you were?
A. Yes.
Q. And the fact that the deed had been made out at another time, and that the signature and all were there, did not attract your attention?
A. No sir.
Q. And no suggestion was made about it?
A. No.
Q. And you supposed that it was a new deed that he had gone out and made?
88 A. I didn't suppose anything about it.
Q. Where was the deed delivered to you?
A. At Joplin, on the date of the deed, March 2nd, when I paid him for it.
Q. Well, did you pay him there at Joplin?
A. Yes sir.
Q. Gave him the whole sum there at Joplin?
A. Yes sir, paid him $5000 and gave him my note for $5000.
Q. And took the deed in your possession there?
A. Yes sir.
Q. On the same date of the deed?
A. Yes sir, I took it on March 2nd; that is the date of the check and the date of my note.
Q. And you say that at that time your attention was not directed

to the fact that you were getting the same identical deed that was made out to Mr. Halsell?

A. No sir, it was not.

Q. You are a lawyer are you not?

A. Supposed to be.

Q. You examined the deed.

A. I read the description, that is all.

Q. Then could you not tell as an attorney a deed made at that time from one made a month or two before?

A. Well I did not pay any particular attention——

Q. ——Well, you examined the paper?

A. I suppose I did; I don't know; I just took his warranty deed,—whether there was any defects in it or not,—why I didn't examine the abstract. He gave me some time to examine the title.

Q. You did not notice the alterations in that deed?

A. No sir, I did not notice them until afterwards.

Q. You noticed them before you paid the last $5000, didn't you?

89 A. I don't know whether I did or not; I think I did possibly; I gave my note and mortgage there for $5000.

Mr. HOWARD: That is all.

Cross-examination.

By Mr. SHARTEL:

Q. Was the first time you noticed it when Mr. Wells called your attention to it some time ago?

A. Well, I had it back here and I don't know just when it was; you know when I took the papers over there.

Q. Was that before or after you paid your note?

A. Well I don't remember as to that.

Mr. HOWARD: You don't really know much about this transaction, do you?

A. Yes I do, I think I do.

Mr. HOWARD: If the Court please, I wish to offer this deed in evidence have you any objection, Mr. Shartel?

Mr. SHARTEL: No. Oh, I want to ask him one more question. All these erasures on this deed were made before you received it, were they?

A. Why the deed looks to me now just the same as it did when I received it, yes sir.

Q. Have there been any changes in that deed since you received it?

A. No sir.

Q. It is in the same condition as it was when you received it from Mr. Renfrow?

A. Yes sir.

Q. And it was in your possession all the time?

A. Yes sir, in my possession and your possession.

Mr. HOWARD: If the Court please, I suggest that we take an adjournment and wait until Mr. Renfrow gets in.

The COURT: Well, of course an adjournment now means and adjournment of the case, etc.

90 For copy of deed above referred to, the same being a deed from W. C. Renfrow and Wife to R. J. Edwards, see Exhibit F. attached to this record and made a part hereof.

J. H. EVEREST was thereupon called to the stand by the plaintiff and having been duly sworn testified as follows:

By Mr. HOWARD:

Q. Mr. Everest, you may look at this deed if you please (Ex. F)—Mr. Everest, did you see the deed sent to the Western National Bank here by Mr. Renfrow, made by him to Mr. Halsell?

A. I did.

Q. Did you examine it?

A. I did.

Q. Have you examined the deed you have in your hand?

A. Yes sir.

Q. What do you say as to the identity of the two instruments?

A. I think that this is undoubtedly the same deed; I examined the deed in the bank on behalf of the other parties to this controversy, to see that the description was correct; I examined it carefully, and in my judgment this is the same instrument, except that the name of Oscar D. Halsell has been erased and that of R. J. Edwards written in, and there appears to have been an erasure in the dates; and I don't remember about the revenue stamps, except that it was properly stamped; I don't remember where they were or the denomination, but I remember that the deed was properly stamped. I notice the mucilage on the deed, and I notice a part of Mr. Halsell's name still in this instrument.

OSCAR G. LEE was the next witness called to the stand by the plaintiff and gave the following testimony under oath:

By Mr. HOWARD:

Q. You may state your name?

A. Oscar G. Lee.

91 Q. You are one of the plaintiffs in this case are you Mr. Lee?

A. Yes sir.

Q. Are you acquainted with the defendants, Mr. W. C. Renfrow and Mr. R. J. Edwards?

A. Yes sir.

Q. Did you see Mr. Renfrow in Oklahoma City about the time that this transaction was had between the parties?

A. I did.

Q. Do you know George J. Shields?

A. Yes sir.

Q. What conversation did you have with them or either of them, about taking charge of that land and surveying it and selling it?

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant excepts.

A. I had a conversation with parties—I think with you and Governor Renfrow,—in Mr. Everest's office.

Q. What was said there by Mr. Renfrow or to him in your presence?

A. Well I told him that we were surveying the land, taking the fence off of it, and were going to plat it and sell it immediately.

Q. What did he say?

A. And had sold some of the lots and had received some money on them: and he said it was all right and to go ahead with the survey.

Q. What was done with reference to surveying it?

A. We employed an engineer and he went ahead and surveyed it.

Q. Were any stakes driven on the ground?

A. Yes.

Q. To indicate the lots and blocks?

A. The blocks: I am not positive about the lots; part of the lots I know on the North side, in the North East corner, were staked off; the balance of it I did not go over to see whether they had all
92 the lots staked off or not.

Q. Any preliminary plat?

A. Yes sir, it was given to me personally by the engineer.

Q. When was this with reference to the 14th of February?

A. I don't think I could answer that.

Q. When was it with reference to the time when Mr. Renfrow went away from Oklahoma City?

A. It was before he went away, after he had come here and turned the deed over to us.

Q. Was there any fence on that property?

A. When we bought it there was.

Q. What was done with that fence?

A. We took the fence off.

Q. Who took it off?

A. We did.

Q. The plaintiffs in this case?

A. Yes sir.

Q. What was done with the material out of which the fence was made?

A. Mr. Wright took the posts; I don't know what became of the wire. The wire lay there on the ground for a few days; I don't know what was finally done with it.

Q. Took the posts off the land?

A. Took the posts off the land, yes sir.

Q. Was anything else done on the land at that time?

A. We employed some one to level it off where it had been plowed up in ridges, and harrow the weeds down and rake them up, I think,—I know we did.

Q. Were any lots sold under that survey?

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial and having no bearing on the issue in this case.

93 Objection overruled. Defendants except.

A. Yes sir, contracted.
Q. Any money paid on them?
A. Yes sir.
Q. Who sold them?
A. I sold two, Mr. Land, I was informed, sold two.
Q. Never mind about the information. Did you have any conversation with Mr. Edwards about this trade for the land at any time while Mr. Renfrow was here?
A. Yes sir.
Q. More than once?
A. Yes.
Q. State the first conversation, telling when and where it was, if you can.
A. The first conversation was between Mr. Edwards and I alone. I merely called his attention that we had bought that land and wanted him to leave it alone.
Q. Why did you do that?
A. Well, from the fact that I thought that he was trying to interfere with closing up the deal.

Mr. SHARTEL: We object to the statement of the witness as incompetent.

The COURT: Well, that question is incompetent, but this is before the Court, and it doesn't make any difference.

Q. Where was that conversation?
A. I don't remember where that one was; we had another one later.
Q. Where was the other one?
A. In front of Owen and Welsh's real estate office on Robinson.
Q. Oklahoma City?
A. Yes sir.
Q. What was said there?

94 A. I merely took hold of Mr. Edwards' coat and pulled him up in front of me, and called Mr. Wright's attention to it, that I wanted to notify Mr. Edwards then and there that we had bought that land and we wanted him not to undertake to prevent us closing up the deal, and we had been informed that he was trying to get the land, and that if he did in any way interfere with our trade and do anything with the land, that we expected to finally secure the land, and that he would buy a law-suit if he bought the land.

Q. Now when was that with reference to the time that Mr. Renfrow went away from here, when he came here with he deed?
A. It was while he was here.
Q. While he was here?
A. Yes.
Q. That was previous to the first of March, was it not?
A. Well, I could not say positively.
Q. Well, it was before he went away from here?

A. It was during the time that Mr. Renfrow was here.
Q. Well what did Mr. Edwards say with reference to the matter?
A. He denied interfering with it in any way.
Q. Did you have any other or further conversation with him?
A. Yes, I told him that we was satisfied that he was interfering with it, and he answered that I might as well call him a liar, and I unloosed his coat, and said "Well, we will just let it stand that way."
Q. Did you see him any more with reference to it?
A. Not before Renfrow went away.
Q. Well, while Mr. Renfrow was here did you see him and Mr. Edwards together?
A. Yes, sir.
Q. Under what circumstances?
A. The evening that we had the conference at the hotel, on Saturday evening before he went away. I think it was Saturday
95 night; Mr. Edwards had dinner with him at the hotel just immediately after my conversation, at 6 o'clock.
Q. That was immediately after you had the conference with Mr. Renfrow?
A. Yes sir.
Q. How long were they together?
A. Well, they were in the dining room probably an hour.
Q. Were you in there at the time?
A. Yes sir.
Q. What was their relation there; did they engage in conversation in the dining room?
A. They seemed to be in earnest conversation during dinner.
Q. What was their relation at the table; where did they sit and how?
A. Well, Mr. Renfrow sat close to one corner and Mr. Edwards sat around the corner.
Q. Was that their position towards each other?
A. They were leaning towards each other, and it seemed to me to be quite an earnest conversation.
Q. How long did that last?
A. Well, they were in the dining room I think about an hour, eating and seemed to be talking——
Q. Did you see Mr. Edwards or not in the vicinity of where you were talking with Mr. Renfrow at any other time?
A. When we were talking with Mr. Renfrow just prior to this?
Q. At any other time besides that evening?
A. I don't remember that I did.
Q. Well, did you have any further conversation with Mr. Renfrow with reference to this land while he was here?
A. Well, I talked to him at different times; I don't remember just how often.
Q. Were you in Mr. Shields' office with him at any time?
96 A. I don't remember that I was.
Q. Were you in Mr. Shields' office with him at any time?
A. Not that I remember of.
Q. Did you meet him at the hotel at any time except this evening?

A. Yes, I met him there at different times. At one time he said he didn't think we ought to expect him to pay that man that was claiming to be in possession down there too much to get him off.

Q. When with reference to the time you bought the land did you find that some one was claiming possession out there?

A. How is that?

Q. When, with reference to the time you bought the land, did you find that there was some one claiming possession of it out there, or part of it?

A. It was while we were having it surveyed.

Q. While you were having it surveyed?

A. Yes sir.

Q. Well, there was a mortgage on this land too, wasn't there?

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

The COURT: Let him answer; it is before the court. Exception.

A. I could not say except that it was understood that there was.

Mr. SHARTEL: We move to strike out that answer.

The COURT: Strike it out.

Mr. HOWARD: Yes, that is all right. That is all for the present.

Cross-examination.

By Mr. SHARTEL:

Q. How many times were you down on this land Mr. Lee; how many times did you see this land, up to the time of Governor Renfrow's leaving here?

A. After we bought it?

Q. Yes, after you claimed that you had bought it?

A. I don't remember, several times.

97 Q. Were you out there and saw the engineer surveying?

A. Yes sir.

Q. What was he doing when you were there?

A. He was out in the vicinity of the southwest corner the first time I went down to see him.

Q. Did you meet anybody down there and have any altercation or discussion about their being in possession of the property,—yourself?

A. No sir.

Q. Do you know what became of the engineer's stakes?

A. No, sir.

Q. Do you know of the man who owned the posts being paid for his posts?

A. I know the man who claimed that he owned the posts; he was paid for them.

Q. Who paid him for them?

A. Mr. Land.

Q. Well, after the Dutchman in possession down there kicked up

that trouble, was there anything more done by your party on that land?

A. The engineer done some work after that.

Q. Did he do some work after that?

A. Yes sir.

Q. Did he do some work or try to do some?

A. Well, he went ahead.

Q. Did you see the engineer there after that time—yourself?

A. Yes.

Q. What was he doing when you saw him there after that time?

A. He was driving some corner stakes, and I am not quite sure whether he was at this side or——

Q. Was that while Mr. Renfrow was here?

A. I believe I will just say that I could not say positively that he went down there again.

Q. You met the Governor at the hotel in the evening—the evening before he left?

A. Yes sir.

Q. The evening you say he took dinner with Mr. Edwards?

A. Yes sir.

Q. What was your conversation with him there at that time?

98 A. Well, he had notified us that he wanted to go home, and for us to meet him over there at the hotel at 5 o'clock, and that he would fix the matter up some way so he could go home.

Q. Was there any conversation about his bringing suit to put that man off over there?

A. Yes sir.

Q. Did he offer to bring that suit and to pay the expenses of litigation?

A. I don't think he did, that night.

Q. Mr. Everest was present, was he?

A. Yes.

Q. Mr. Everest suggested at that time that they would give him thirty days to get that man off of there, did he not?

A. I think so.

Q. And Mr. Renfrow said to that "Well suppose I don't get him off in that time, what then" didn't he?

A. Well I could not say to that.

Q. And Mr. Everest indicated to him that if he didn't do it in that time, he would have to sue for damages, didn't he?

A. Not to my knowledge.

Q. Don't you remember that conversation took place?

A. Not that conversation.

Q. You were not in my office with the plaintiffs at the time they met Mr. Springston, who claimed to have the lease on this land?

A. No sir.

Q. You were not there on any of the occasions that the parties met there in my office?

A. Not that I remember.

Q. You insisted very strenuously that the Governor get that

Dutchman out of the way down there, as a condition of closing this trade, did you not?

A. Well, we made him about every offer we could think of; we would give him plenty of time; thirty days was mentioned—but it was not mentioned as a limit or anything of that kind—only as the probable time.

99 Q. Thirty days was mentioned?

A. There was thirty days mentioned, but it wasn't limited; it was not agreed that he could have more time; it was merely suggested in the conversation.

Q. Was it not also suggested by Mr. Everest that if he did not get him out of there in 30 days, it would be a question of damages?

A. Not to my knowledge.

Q. Do you know what Mr. Springstine, the Dutchman, asked as condition of surrendering possession?

A. Mr. Renfrow informed us that he asked $500.00.

Mr. SHARTEL: I guess that is all.

Redirect examination.

By Mr. HOWARD:

Q. What, if anything, was said about paying him $500?

A. Mr. Renfrow said he did not htink we ought to expect him to pay that man $500; we ought to give him a chance to sue him and get him off; he said that he had retained Mr. Shartel as his attorney, and that suit would be brought, and he said he had offered him $125 to get off.

Q. I wish you would look at that deed there Mr. Lee—Did you examine the deed that was in the Western National Bank made by W. C. Renfrow and wife to O. D. Halsell, to this land?

A. I did.

Q. What do you say as to whether this is the same instrument?

A. This appears to be the same deed.

Recross examination.

By Mr. SHARTEL:

Q. Did the Governor have the deed here with him when he was here, or do you know?

A. I was informed——

Mr. HOWARD: Well, unless you saw it——

A. Well, I don't know.

100 Q. Did you understand that he had the deed with him for the property?

A. I think I was informed that he had sent one on to his wife to be acknowledged.

Q. You understood that the Governor had come down here to close up the trade with you folks?

A. Yes sir.

Q. He was here two days?

A. I think he was here longer.
Q. And the evening that he went away you met and had a discussion with him?
A. Yes sir.
Q. Now tell the court why it was that you did not close this trade with him that night. You had your money all ready?
A. Yes. (hesitates) I don't believe that I can say the reason why,—we just—everybody quit and went away.
Q. You cannot give the court to understand why it was that you did not close that trade that night?
A. One of the reasons was that we was waiting for him to get that man off, and he agreed to get him off.
Q. That was the thing that stopped the whole deal that night, was it, that this Dutchman was on that ground?
A. Yes, I think so.

Redirect examination.

By Mr. HOWARD:

Q. You understood also that the deed that Mr. Renfrow had at that time included land that he did not own—that had been sold, didn't you?
A. Yes sir.
Q. And that that exception of 200 by 300 was written in the deed afterwards?
A. Yes sir, this was in the deed that came to the Western National Bank.
Q. And that that deal could not be closed that night till without your excepting a deed for land that he did not own?
A. Yes, sir.
Mr. SHARTEL: You agreed, did you not, to simply take out $200 for that?
A. When he sent this deed to the bank he did not take out that $200.
Mr. SHARTEL: Well, the night he was here,—the $200
101 proposition,—you had verbally agreed with him that that should be cut out?
A. Yes sir.
Q. Two hundred dollars deducted on account of the little piece of land 50 by 140, that Mr. Cunningham had sold, previous to the time that Mr. Renfrow had purchased it?
A. No sir; I remember he didn't have the deed at that time, that night; he did not have the deed at the time we had this conference; we had agreed on this change, and we was to have a new deed.
Mr. HOWARD: You understood that he had sent that deed to his wife to be executed at that time?
A. Yes sir.

Mr. SHARTEL: I guess that is all.
Mr. HOWARD: That's all.

J. H. EVEREST was thereupon recalled by the plaintiff and testified as follows:

By Mr. HOWARD:

Q. You are one of the plaintiffs in this case Mr. Everest?
A. Yes sir.
Q. You know Mr. Renfrow and Mr. Edwards?
A. Yes sir, know them both.
Q. Did you meet Mr. Renfrow when he was down here to close this deal?
A. I had three conferences that I remember with him.
Q. Where was the first one?
A. I think Governor Renfrow came to my office the first time.
Q. Can you tell the court what was said there?
A. Well, Governor Renfrow said in substance that he had come down to close up that deal, and I think submitted to me a description of the land, in order that I might compare it with the records and ascertain whether it was a correct description; the description was somewhat long and by metes and bounds. I think that was about the subject of our first conversation, as well as I can remember

102 Q. Was anything said at that time about a mortgage on the land?

A. Yes, I think Governor Renfrow asked me if I did not hold a mortgage on the land that had been made to Mrs. H. A. B. ——, and wanted to know if it could be released; and I gave him the figures, which, if I remember, was $500, up to the date of the release, and he said he would pay that amount and secure the release in order to make the tract clear; that was the only thing against it as far as we knew at that time,—or as far as I knew.
Q. That was all satisfactory to everybody?
A. Seemed to be.
Q. Well, you may state whether at any time, up to and including the time that he sent this deed to the Western National Bank with the draft attached to it, he had paid any part of that mortgage?
A. Not up until a considerable time afterwards; Mr. Edwards paid it a considerable time afterwards.
Q. So that at the time the deed and draft were sent to the bank, the mortgage was still on the land?
A. Yes sir, and he did not offer to pay it, further than his statement that he would pay it.
Q. Where next did you meet him?
A. I think at Mr. Shartel's office.
Q. Now what was the object of that meeting?
A. Well, I had been informed that some one claimed possession of the tract; I had not been out there and didn't see any of these things there, but I was informed by the people interested with me, that some one was claiming possession of some kind out there, and we went to Mr. Shartel's office to adjust the matter if possible and find out what sort of a claim he had, and whether he could get rid of it.
Q. State what, if anything was said about backing out of the trade—calling if off or anything of that kind?

103 A. Nothing at all in that interview in Mr. Shartel's office, that I heard.

Q. Well, what was talked about getting rid of the man that was claiming the place?

A. Simply that he would get rid of him; that Mr. Renfrow was going to get rid of him; that he was simply a trespasser, and that he would have him put off the land.

Q. Well, what steps were taken?

A. I think some notice was to be served on him, and that it would be served right away, suit brought immediately, and he would be put off the land.

Q. Anything said about settling with him?

A. I think that somebody said that he wanted $500, and Mr. Renfrow said that he would not pay that, for the man had no right there, and he didn't propose to be bled. That was the substance of it.

Q. Now was anything else said there relative to the matter?

A. Well I think that, as near as I can remember, I was called away and had to go; and we had an understanding that we were to meet at five o'clock at the hotel.

Q. Did you meet at that thime there?

A. Yes sir, and I think Mr. Halsell and Mr. Land and Mr. Lee and myself were there; I am not sure that Mr. Halsell was there; Mr. Land was there and I think Mr. Lee and Mr. Halsell.

Q. Well, what was the conversation there?

A. Well, the conversation was concerning getting rid of this man Springstine or some such fellow—getting rid of the man that claimed possession; and it had been discovered in the meantime that there was a tract of land embraced in the deed to Mr. Renfrow that had been previously sold by Mr. Cunningham before Mr. Renfrow got the property, and that Mr. Renfrow had no title to. I have forgotten the size of the strip, but I think it was four lots or such a matter——

Mr. SHARTEL: Just refer to the deed there.

104 A. (Complying:) 200 feet wide and 300 feet long; yes, that would be about eight lots of ordinary size here; and we first, I think, discussed the question of making an arrangement that would be satisfactory in regard to that.

Mr. SHARTEL: Pardon me, look again——

A. Oh yes, (reading) "Also excepting a certain piece of ground 50 by 100 feet deeded to C. A. Compton by Bennie L. Cunningham, on August 29th, 1898." Now I don't know whether all of that tract was in that condition or not; I know that 50 by 100 feet was, and I think probably part of the other. However, we at once began the discussion of how much the plaintiffs ought to be allowed off of the purchase price for the tract which the Governor had agreed to convey and which he evidently could not convey because it was not his, and we thought $400 was the smallest amount we ought to expect from the Governor; that we ought simply to deduct an amount in proportion to the price of the whole tract for that piece of ground, taking the average price of the land as a basis. But we finally agreed on $200.

Q. Now what if anything was said about correcting the deed?

A. Governor Renfrow did not want to sign a deed with a warranty to it for land that he did now own, and he said that he would have it corrected, and would deduct the $200 from the purchase price, and make an exception of it in the deed.

Q. Well, what else was said at that meeting?

A. Well, it was all agreed upon, and then we talked about the question of Springstine's claim for possession, and Governor Renfrow seemed to have changed his mind somewhat from the talk in the afternoon.——

Mr. SHARTEL: Wait—we move to strike that out——

WITNESS: Well, he said that he had; that we ought to take the land subject to that possession and prosecute the suit and relieve him of further responsibility in the matter. He argued that it was difficult for him to atend to that on account of his distance——

105 Mr. SHARTEL: Wait, wait, here——

WITNESS: Well, the plaintiffs stated that they were not willing to do that; that the land was to be conveyed by contract clear and free from incumbrance and all adverse possession, etc.; that it was our object to sell it immediately and be able to give title and finally the Governor asked how much time we would give him to get possession. I said we were willing to let him have thirty days within which to try a forcible entry and detainer suit in the lower court and obtain judgment, so that he could get possession; and the Governor then wanted to know what would happen if he did not get possession in 30 days, and I said that would be a question for damages probably under his warranty deed, but that we would waive that, but we wanted to know if he was proceeding in good faith, and would endeavor to put us in possession; and he got very angry, and said that he never had anything to do with a lawyer that he didn't get into trouble of some sort, and I left him; his reference to the legal profession was not flattering at all, and I was a little warm myself.

Q. State what if anything was said in that conversation about rescinding the contract?

A. I did not hear anything said about that.

Q. And was it on that night that it was suggested that the deed should be corrected?

A. Yes sir, he agreed to send it back and have it corrected by omitting the property or excepting the property that was deeded to some one else, and taking $200 off the purchase price.

Q. Were you at the Western National Bank after the deed came there?

A. I went over to examine the deed.

Q. You think this is the same deed?

A. I think it is.

Q. Was the deed satisfactory?

A. The deed was all right.

106 Q. Well, what were the conditions attached to delivering the deed over?

A. The person having it in charge—I don't remember who it was, whether it was Mr. Holt or one of the other employes of the bank, told me that their instructions were that we were to pay $9,500, and upon that payment that the deed would be delivered to us.

Q. Five hundred dollars had already been paid?

A. Yes sir; he stated that the letter to them, or instructions, stated that $500 had been paid to Mr. Shields, and that while the deed called for $10,000, on the receipt of $9,500 he was to deliver the deed.

Q. The $200 was not deducted?

A. No sir, there was nothing said about that at all, by them.

Q. Do you know who paid this man for surveying the land?

A. I know nothing about that at all.

Q. Well, this $500 that had been paid to Mr. Shields, who paid that?

A. I paid $100 of it to Mr. Land for that purpose.

Q. Did you receive it back?

A. No sir.

Q. Nobody ever offered to pay it back to you?

A. No sir.

Q. You know Mr. R. J. Edwards, do you?

A. Yes sir.

Q. About the time that Mr. Renfrow was here did you have any conversation with him with reference to this matter?

A. Well, it was either just before Mr. Renfrow came or the day he arrived; I think it was before he came that he and I had a conversation.

Q. Where was that conversation?

A. I think it was on Robinson near the postoffice.

Q. What was it?

A. Well, Mr. Edwards either overtook me or I overtook him, and we spoke and he said that he had learned that we,—that Mr. Halsell and you fellows, was the way he expressed it—had bought the Cunningham tract, and he stated that he had been figuring on it himself, but he guessed that he was too slow.

107 Q. Well, did you have any other conversation with him with reference to it?

A. Yes, I had a subsequent conversation with him; I had several but I recall one other conversation particularly.

Q. When was that?

A. It was on the day when this suit was started, I think it was the 8th day of March, 1901.

Q. Where was it?

A. It was coming up the steps of the land office building in which my office was also located, in the afternoon of that day.

Q. Where had you been?

A. I had just returned from the office of the register of deeds to look up this particular tract of land and ascertain whether there had been any transfer from Mr. Renfrow to any other person.

Q. Where was the register's office with reference to your office?

A. Right across the street in what is now the postoffice building.

Q. Well, where did you meet Mr. Edwards?

A. At the foot of the stairs; we came upstairs together and walked down the hall towards my office together.

Q. What was said?

A. Well, the substance of it was this: Mr. Edwards says: "I understand that your trade with Governor Renfrow for that land fell through and you refused to take it." and I said, No, that it had not fallen through; that the Governor seemed a little slow about closing it up, and that we proposed to make him carry out his contract, and that I had already prepared a suit, and was just going in to get the papers and take them and file them for specific performance.

Q. What did he say about having bought it at that time?

A. He didn't say a word about that; he went into John Wright's office and I went on into my office.

Q. How far was it to you- office?

A. Fifty or sixty feet. I took up the papers which had been prepared and signed up and walked over to the clerk of the district court in the same building, and filed them.

108 Q. How far was that?

A. Across the street and upstairs in the other building.

Q. Did you see anything of Mr. Edwards after that?

A. Yes sir, I saw him the next day I think.

Q. Well, did you see him on that day?

A. I am not sure whether I saw him that evening or the next morning; I saw him in a very short time; I am rather of the opinion that it was the next day, tho'.

Q. Where did you see him?

A. On the street; we met in the vicinity of the postoffice.

Q. Did you see him immediately after filing this suit?

A. It was either that evening or the next morning; I am not sure which; it was a very short time after the suit was filed; it might have been that evening; I will not say as to that; it was either that day or the next morning.

Cross-examination.

By Mr. SHARTEL:

Q. When you suggested to Governor Renfrow that night at the hotel something about suing for damages if he did not give possession within thirty days, he swore a little, didn't he?

A. Well, I didn't suggest, I said that it would be a question for damages—Well, no,—I think he did a little cussing——

Q. Did not he indicate where you might go to?

A. Why, I don't know; it was quite as strong as that. I thought he was very discourteous; it was not the sort of treatment I expected from a man of his standing.

Q. He became very angry?

A. Yes, he got angry.

Q. And did not he say there and then that this thing was off?

A. No sir, he did not say it to me.

Q. Now in my office—you were up there?

A. Yes sir.

109 Q. Was not this plan of my bringing suit to put Springstine off of that land quite fully discussed?

A. It was discussed very fully, as to what the proper proceeding was, and how quick you could do it.

Q. You fully understood the nature of the claim of possession of Mr. Springstine on that land, did you not?

A. You stated it to me.

Q. Well, you saw his pretended lease too, didn't you?

A. No sir, I don't think I saw that. You stated to me what it was, you and Phil Kramer his agent; whether you told me or whether I saw it I don't remember, but I understood what was the nature of the claim and how it arose.

Q. Governor Renfrow was in my office with you gentlemen when he employed me to bring suit to put him off, and also informed you that he would stand all expenses of putting him off——

A. That is what he said.

Q. And you gentlemen, every one of you, refused to accept that solution of the matter?

A. We did not come to any agreement as to that.

Q. Well, you expressed yourself as quite dissatisfied because you wanted to plat the property and put it on the market?

A. We stated that we wanted to sell it; we did not want to keep it, and we wanted to get immediate possession, and we adjourned as I said to meet at the Lee Hotel and talk over the matter over there.

Q. Do you mean to say that Governor Renfrow withdrew his proposition at the Lee Hotel?

A. No, I did not understand that he did.

Q. He simply said: "If you want that land, go ahead and take it with such possession as I can give, and I will go ahead and prosecute the suit and will bear all expenses and will give you complete possession as soon as possible." Didn't he?—Was not the substance of what he said: "You fellows go ahead and take this deed, and I'll go ahead and prosecute this suit and give you possession as soon

110 as I can?"

A. No, he did not seem to be as willing in regard to prosecuting the suit as he had been that afternoon.

Q. You wanted him to guarantee the time of the delivery of possession, did you not?

A. We wanted him to buy the man off or make some sort of arrangement so that we could get possession, and when I made my suggestion in response to what would happen if he didn't get him off in 30 days, he got angry.

Q. You did not understand that he was going to quit the deal?

A. I did not understand that he quit the deal at all; we expected him to carry out his contract with us in good faith up to the time I filed the suit.

Q. Now, all of these negotiations had with Mr. Renfrow here, were simply verbal—together?

A. All I had with him was verbal.

Q. All the writings that you know anything about have been put in evidence, have they not?

A. I believe all that I am familiar with, yes.

Q. Everything that you know anything about is already in evidence?

A. I think so, as far as I know.

Q. All these negotiations were simply by word of mouth?

A. With the exceptions of the telegrams, the letters and the deeds, I think they were as far as I know.

Q. He didn't deliver any of these deeds to you personally?

A. No, his agent the bank, refused to deliver it; he had promised up there at the hotel that night——

Q. —Well, that discussion there at the hotel was all verbal?

A. All verbal.

Mr. SHARTEL: That is all.

Mr. HOWARD: What, if anything, did the Governor say about the length of time it would take to get that thing off?

A. I don't remember about that, Mr. Howard; I don't recollect what he did say about that.

Mr. HOWARD: That is all.

111 OSCAR D. HALSELL was the next witness called to the stand by the plaintiff, and after having been duly sworn, testified as follows:

By Mr. HOWARD:

Q. You are one of the plaintiffs in this case are you Mr. Halsell?

A. Yes sir.

Q. What do you know about this $500 that was paid to Mr. Shields, did you pay any part of that?

A. I paid $125 *dollars.*

Q. This paying of the engineer,—did you help pay that?

A. Yes, but I do not remember the amount.

Q. Were you at home when this trade was first made?

A. Well, I was at home when Mr. Wright first came to me about the deal.

Q. Dan Wright, one of the plaintiffs?

A. Yes; but I wasn't at home when Mr. Renfrow came here.

Q. Did you come home while Mr. Renfrow was here?

A. Yes sir.

Q. Did you see him?

A. Yes sir.

Q. Where did you see him?

A. In Mr. Shartel's office.

Q. What conversation did you have with him?

A. Well, they called him over the phone—this was on Saturday—and he came to Mr. Shartel's and I went up there and asked him what was the matter that he didn't close the deal, and they said there was some little differences there between them that they were trying to

get adjusted, and a general conversation was carried on there in regard to it.

Q. Well, did you have any conversation with Governor Renfrow yourself?

A. Yes, I asked the Governor if we could not get together about the matter and arrange it satisfactorily; that I would be perfectly willing to do anything that was satisfactory; and he said something about some people being in possession out there, or claiming
112 possession, that he possibly would not be able to get possession on the land; and I told him then what I would agree to do with him: That I could take the money and he would take the deed and take it to Mr. M. L. Turner, a close friend of both of ours, and we would leave the deed and the money there, and as soon as he could get possession the money could be turned over to him and the deed turned over to me. He said he was not willing to do that; that he had had considerable trouble with the thing, and if we wanted it we would have to take it then; and I told him that I thought he was quite unjust about that, and that I thought the other proposition was a fair one, and that I did not believe that he as a business man, would go out here and buy a farm and not quiet the title, and that there could not be anything unjust in his putting the deed in the bank with our money; that it might be an indefinite time before we could get possession of the land, and that really I didn't know anything about what the claims of the man were to the land; that I had just come and didn't know the situation of the deal.

Q. Did you hear anything said about a mortgage on the land?

A. Well, I heard something said about a mortgage on the land, and it was also discussed about the deed covering some land that had already been sold, which he stated could be agreed on at that time.

Q. And it was understood that the deed there was not correct, was it not?

A. Well, I don't know as to the deed; I did not see it.

Q. Well, was it stated there by any person in his presence or by himself, that the deed was a correct description of the land?

A. Well, it was discussed there as to the land not properly being described.

Q. Well, the deal could not have been properly closed right there and then, on that account, could it?

Mr. SHARTEL: Well, let's have the conversation.

13 Q. Yes, go ahead. What further, if anything was said, if anything, about getting this man off the land?

A. Well, it was finally decided to send for those parties.

Q. That claimed possession?

A. Yes,—and see if a proper settlement could not be made. It was, as I thought, practically understood that a compromise would be made; and he came; and then there came up the question about them living up to their agreement providing that he settled with him.

Q. Well, did they talk about arbitrating it?

A. Yes sir.

Q. Did they talk about that before these people were sent for?

A. Yes sir.

Q. What did Mr. Renfrow say about arbitrating?

A. Well, there was just a kind of an agreement among all of us that we would send for them, and try and make a settlement, and when they came, the question of it not being satisfactory and them not living up to it came up; and then we sent for John Wright their attorney, and see if he would guarantee that they would live up to it or not,—that is, to see whether we would be willing to take his guarantee. And Mr. Wright came up and said that they would live up to it and he would guarantee that they would live up to it. And the next thing that came up, Mr. Shartel said that he would be willing to submit a statement of facts but he would not be willing to arbitrate.

Q. What did Mr. Renfrow say about being willing to arbitrate at any time with these people?

A. That is the only conversation I had with Mr. Renfrow there; I said to Mr. Renfrow this: "Now Governor, I will be willing to say this for myself, not for my associates, because I have not talked to them, that I will stand half of it—that is, if we will stand half of it will you stand the other half of the compromise?"

114 Q. —With these people?

A. Yes. And he said no, he would not give them a cent.

Q. Was anything further said about arbitration?

A. Well, they decided there and then that they would meet at the Lee Hotel later; and discuss the matter there.

Q. What, if anything, did you hear about rescinding this transaction?

A. Nothing.

Q. Well, what did you hear about this misdescription in the deed, in this conversation?

A. Well, there seemed to be two; that is, first Mr. Lee claimed that the description did not cover the ground—didn't go around it, that it was, as I understood it, in one place, and then there was some land deeded there that had been sold previous to the time that the Governor bought the land.

Q. Well, what was said about adjusting that?

A. Well, it was generally understood there that that could be adjusted—that part of it.

Q. How?

A. Well, by agreement.

Q. Well, were you present at the time it was adjusted?

A. No sir.

Q. You were not present at that time?

A. No sir.

Q. A draft for the purchase money was drawn on you was it not?

A. Yes sir; I didn't see the draft, but he so stated in his letter. He wrote me a letter,—I don't remember about the draft, that the deed would be in the Western National Bank.

Q. You went to the bank did you?

A. Yes sir.

Q. Took the money with you?

A. Yes sir.
Q. How much did you have?
A. Ninety three hundred dollars.
Q. Did you offer to pay that to the bank and take out the deed?
A. Yes sir.
Q. They demanded $9500?
A. Yes sir, that is what they demanded.
Q. The other $500 was the $500 that had already been paid?
A. Mr. Shields held five hundred.

Mr. HOWARD: I believe that is all.

115 Cross-examination.

By Mr. SHARTEL:

Q. You made the bank a tender?
A. Yes sir.
Q. I call your attention to a letter from Governor Renfrow—this is Exhibit D; you wrote Governor Renfrow about that time, didn't you?
A. Yes sir.
Q. At the time you made this tender, you coupled it with two conditions, one that the amount be reduced to $9,300—that was the amount tendered?
A. Yes.
Q. And the other one was that Mr. Holt or Mr. Renfrow deliver you possession of the land?
A. The deed and possession for that $9,300.
Q. At my office (refreshing your recollection) we sent for Mr. Wright, I believe?
A. Yes sir.
Q. We also sent—or he brought his parties up with him—they all came up?
A. Not together, Mr. Shartel,—at different times.
Q. He brought that gentleman sitting over there, did he not?
A. Why, I don't remember of a gentleman outside of Mr. Wright.
Q. Do you not recall Mr. Halsell, that when we sprung on Mr. Wright that proposition to arbitrate, or make some quick adjustment of the matter, that he said that we could buy him off according to his previous proposition of $500, and that was all he would do—or that his parties would do?
A. That is my understanding, that they were willing all along to arbitrate, Mr. Shartel, and your proposition was to make a statement of facts.
Q. Well, did not Mr. Wright simply cut the thing off by saying "Give us $500; that is all we will do?"
A. I think he said that he would either arbitrate or take $500.
Q. Wasn't the arbitration discussed prior to that between ourselves, before Mr. Wright came; and when we sprung that proposition on him, didn't he simply turn the thing down, and state
116 that he didn't know why he was sent for over there; that we knew what he was willing to do, and if we wanted to give him $500 it was all right?

A. I understood that we sent for them for the purpose of deciding whether they would arbitrate, and I think that it was generally understood there that we would arbitrate the matter.

Q. Well, as between us; but did not Mr. Wright and Mr. Springstine when they came there simply *race* right back and say five hundred dollars or nothing?

A. Not while I was there. Mr. Wright said they would take $500, was my understanding, or that they would arbitrate the matter, and they would not consent to a statement of facts.

Q. You met the Governor at the hotel on the evening before he left you say?

A. No, I was down there but I didn't meet him; I went away.

Q. As far as you were concerned, you never would have paid that $9,500, unless they had put you in possession of that property, would you?

A. Paid what?

Q. You never would have paid the balance of the purchase money unless he had put you in possession of the property; you made that a condition to closing the thing up?

A. I didn't make any condition at all with him; I offered to put the money up in the bank and adjust the matter fairly and squarely with him.

Q. And you would not have demanded the deed and paid the money over unless he got you possession; you would not have paid that money to Governor Renfrow and taken your deed and let him keep the money, unless he had given you possession of that property, would you?

A. Well, that would be a question of what my associates decided.

Q. Well, that was what you said to him in your letter?

A. I told him that I certainly would want him to carry out his contract,—would expect him——

117 Q. —Wait a moment. You stated to him in your letter that you would not close that deal and let him have the $9,300, or whatever it was, unless he put you in possession, didn't you?

A. Said that in the letter?

Q. Yes.

A. I do not think you will find it there Mr. Shartel.

Q. You never made him any unconditional tender of the money at any time except coupled with this demand for possession, either to him or to the bank, did you?

A. Except at the time at the bank, do you mean; any other time?

Q. Yes sir.

A. No, I didn't; I paid my money to Mr. Land; I don't know whether he ever did or not.

Q. You got your money back paid to Mr. Land, all except the $500?

A. Yes sir.

Q. And at the time this deed was made; at the time this deed was offered to you by the bank, you had $9,300 there?

A. In a green box.

Q. In a green box?
A. Yes sir.
Q. And tendered it to Mr. Holt?
A. Yes sir.
Q. And that is the only tender of that kind or character that you ever made to Mr. Renfrow or his agent, or was ever made as far as you know?
A. As far as I know it is.
Q. And that tender was coupled with the two demands; that they were to put you in immediate possession, and the other that they accept $9,300 in full settlement for the deed?
A. There was those two conditions; that we wanted possession, and the additional $200 agreed upon.

118 Redirect examination.

By Mr. HOWARD:

Q. They in fact told you that they were instructed to collect $9,500?
A. Yes sir.
Q. And would not accept any less?
A. Would not accept any less.
Q. I will ask you whether or not at all times since the 14th day of February, 1901, you and these other gentlemen have been able and willing and ready to pay this money upon receiving the deed for this property according to the arrangement that you had with Mr. Renfrow?

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial. Overruled. Defendants except.

A. Why, I will pay it, I don't know what they will do; it was generally understood that we would be willing to pay it.
Q. You paid the money out at one time, didn't you?
A. Yes sir, Mr. Land had the money.
Q. And you would pay it all now if you could get the land would you not?
A. Yes——

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial. Objection overruled. Defendants except.

A. Yes sir.
Q. And you and these gentlemen are able to pay the money are you?
A. Yes; I would like to have either one of their notes for their part of it.
Q. You may state whether or not you are now ready and at all times have been ready to pay over the amount agreed upon for that land, to Mr. Renfrow or Mr. Edwards, or both of them, whichever one of them is entitled to it, at any time they would accept it, or whether you are ready to pay it into court at any time that the court may require you to do so?

Mr. SHARTEL: Objected to as incompetent, irrelevant and immaterial. Overruled. Defendants except.

A. Yes sir.

Mr. SHARTEL: How much are you ready and willing to pay?

A. How much?

Q. Yes.

A. $9,300; we have paid $500.

J. H. EVEREST was thereupon recalled for further examination by the plaintiff, and gave the following testimony under oath:

By Mr. HOWARD:

Q. You may state Mr. Everest, whether you and the gentlemen who are associated with you in this matter, at all times since the 14th of February, 1901, have been and now are able, willing and ready to pay to Mr. Renfrow or to Mr. Edwards or either of them or both of them, or to whichever one of them is entitled to it, the amount which you contracted to pay, at any time that they will accept it, or whether you are ready to make such disposition of that fund as the court may direct at any time?

A. Yes, have always been and are now.

Q. You are ready and willing to pay it all if necessary, are you?

A. Yes sir.

Mr. SHARTEL: How much?

A. We have at all times been willing to pay the full amount of $10,000 agreed upon, less the $500 received by Governor Renfrow's agent, and the $200 agreed upon as the deduction for the property that he did not own, and that he agreed to do; and, if the money is paid into court, to have it paid upon such judgment as the court may render.

Mr. SHARTEL: Did you ever make any tender of this money to Mr. Edwards?

A. I think not. I never offered Mr. Edwards anything except in court here; there was a tender made, I believe here. I'll take that back; I did offer to pay Mr. Edwards the money at any time, and some more with it.

Mr. SHARTEL: Well, that was in the way of compromising this case wasn't it?

A. Yes.

L. L. LAND was the next witness called to the stand and gave the following testimony on behalf of the plaintiff under oath:

(Sworn by the Court.)

By Mr. HOWARD:

Q. You are one of the plaintiffs in this case, are you?

A. Yes sir.

Q. Do you know Mr. R. J. Edwards?

A. Yes sir.

Q. Do you know Mr. W. C. Renfrow?

A. Yes sir.

Q. It was you that paid the $500 to Mr. Shields?
A. Yes.
Q. Did you see Mr. Renfrow soon after you paid that money?
A. I seen Mr. Renfrow as soon as he came here,—it was probably three or four days before he got here.
Q. You knew he was coming here?
A. Mr. Shields said he was coming here, yes.
Q. Where did you first see Mr. Renfrow?
A. I think I met Mr. Renfrow in Mr. Shields' office.
Q. The first time?
A. Yes.
Q. Did you have a conversation with him there?
A. Why yes, I had a conversation with him.
Q. What was said by you and him?
A. Why, I told him that we had taken possession of the land, and was surveying it and platting it; and I told him that Mr. Shields had told us to do that.
Q. What did Mr. Renfrow say?
A. That was all right,—whatever Mr. Shields said.
Q. Go ahead, what did you say?
A. Mr. Renfrow said that that was all right, whatever Mr. Shields said was all right.
Q. Well, did you ever have a conversation with him after it was discovered that some one was claiming possession out there?
A. With Mr. Renfrow?
Q. Yes.
121 A. Yes.
Q. What did he say about that possession?
A. Why, I remember one conversation I had with him; that was one morning I went down to Mr. Shields' office and he was in the office and he says, "I would have given $50 to have got started home this morning," he said his wife was not well, and he says, *he says*, "I have sold you fellows this land and I am going to put this man off of there before I go away;"—Mr. Springstine, that was.
Q. Well, did you have any further conversation?
A. At any other time? Yes; he told me,—he went down to the land, I didn't go with him,—but he and Mr. Shields went down there, and he came back and said that Mr. Springstine had offered to arbitrate with him; and he said of course he would arbitrate with him, if he could not make any other satisfactory arrangement, why he would arbitrate with him, and get him off that way.
Q. Well, was anything afterwards said about arbitrating with him?
A. There was nothing said that I know of except what was said in Mr. Shields' office.
Q. Did Mr. Springstine or his attorney finally say that they would arbitrate with him?
A. I could not say that I heard Mr. Springstine say that, but I heard Mr. Renfrow say that Mr. Springstine would arbitrate it.
Q. Do you know John Wright?
A. Yes sir.

Q. Did you hear him say anything about it?

A. Mr. Wright, I think, did say that they was willing to arbitrate it.

Q. Well, what was said about their standing by the result?

A. Standing by the result—it was after this meeting at Mr. Shields' office; he insisted that nothing that they did, that these parties would not stand by it.

Q. Mr. Renfrow said that?

A. Yes; and Mr. Wright was sent for,—or at least I know I had a talk with him, and he said that he would guarantee that he would stand by it; and then I know after that, that I told Mr. Renfrow that we would take Mr. Wright's guarantee.

122 Q. If they would go ahead and arbitrate it?

A. Yes sir, if they would arbitrate it.

Q. Did you have any conversation with Mr. Edwards about this transaction,—about this land, in any way?

A. At what time?

Q. At any time along about then?

A. I don't think I did.

Q. Nothing was said between him and you about this land at any time along there?

A. Well, I had sold a couple of lots out there——

Q. —Get any money on them?

A. I got $85.00.

Q. When was that with reference to when Mr. Renfrow was here?

A. Well, I don't remember; I think it was probably the day before he came here; somewhere right along about the time he came here; I had went out and taken a party out there and sold him a couple of lots.

Q. Did you have any conversation with Mr. Renfrow about what you were doing out there in the way of selling lots?

A. I don't think that I did, but I think that Mr. Shields did.

Q. Well, what about this conversation with Mr. Edwards that you started to tell about?

A. Well, I met Mr. Edwards in the State National Bank—that was after this Mr. Springstine had showed up on the place, there was work done there, quite a good deal; I didn't have any idea—I didn't know there was anyone claiming possession of the place at all. So when we found out that Mr. Springstine was claiming the land—a lease on the land—I met Mr. Edwards up in the State National Bank one day, and he kind of laughed at me a little and wanted to know how we was getting along selling our lots out in the addition, and I told him that we had got to selling them a little, but I thought we would sell them well——

Q. —That was long before he bought the land?

Mr. SHARTEL: Wait a minute; I would like to have the witness fix the time instead of counsel.

123 WITNESS: Well, it was before Mr. Renfrow went away from here.

Q. I will ask you Mr. Land if at all times you have been ready to pay for this land, and if you are able to do it and if you are willing

now and able to make such disposition of the amount demanded as the court may direct?

A. Yes sir.

Q. Or to pay it to these people at any time they are ready to accept it?

A. Yes sir.

Mr. HOWARD: That is all.

Q. That money which you paid to Mr. Shields, how about that,—each man paid his share, didn't he?

A. Yes sir.

Q. Has that money ever been offered back to you or any part of it?

A. No sir.

Q. No one ever said anything about paying it back to you?

A. No sir.

Q. Or about paying for the surveying of this land and that sort of thing,—you paid your part of that?

A. Yes sir.

Q. That has all been paid, has it?

A. That has all been paid.

Cross-examination.

By Mr. SHARTEL:

Q. Who did that surveying?

A. Why Mr. Chamberlain or Chambers—well, it was the city engineer.

Q. How much did you pay him?

A. Why Mr. Lee paid him; you will have to ask him.

Q. Well, do you know how much the item was?

A. Yes, ten dollars was credited to me.

Q. What other expenses did you incur down there?

A. Well Mr. Wright brought in an account, but I don't just remember what it was; it was for levelling down the ground—for some harrowing, and taking up some posts and hauling them away—work he done himself, I think.

Q. You found this man down there and after he raised the controversy with you, you never went back and tried to do anything more after that, did you?

124 A. Why, they went ahead surveying there; I don't know just how long; but I know I went there and sold those lots; I don't know whether he completed the surveying; I don't think he was there long enough, but when I went down to sell these lots I know that the stakes were all on Reno for each lot, for every twenty-five feet, I know that, but I didn't go over the land.

Q. You paid Mr. Springstine for the posts you had taken up, and Mr. Springstine went back in there and farmed that land, didn't he?

A. I don't know what he did with it; but Mr. Springstine farmed it, I guess; I don't know; I could not say about that. Now, you asked me about paying for the posts——

Q.—Yes.

A. After this suit was brought and Mr. Edwards had the deed,

why Mr. Edwards met me on the street one day and told me that those were Mr. Springstine's posts, and he said that part of them had been hauled away from there, and he said that Mr. Springstine was going to sue us for them, and I met Mr. Springstine and he told me that part of the posts were his, and I paid him for them.

Q. After this trouble came up with Springstine, as far as you know, you never did exercise any acts of ownership over the land any further, until something over a year afterwards when Mr. Wright went down there?

A. As soon as we took possession of it on the first of the year——

Q. On the first of what year?

A. This year; we didn't want to fight our way, and so as soon as the lease was out we——

Q. You moved out of there until Springstine's lease was out?

A. We didn't propose to do any fighting; I didn't I know.

Q. And then when Springstine's lease was out, you walked in down there and took possession of part of the land, is that true?

A. Yes sir.

Q. And that is while this suit was pending in this court, wasn't it?

A. Yes sir.

Q. Whose signature is that Mr. Land? (handing witness paper)—that lower one?

125 A. That lower one must be mine.

Q. You subscribed to that—swore to it?

A. That is my signature.

Mr. SHARTEL: We offer in evidence, as part of this cross-examination, the original petition filed in this case. (See petition in clerk's record.)

The COURT: Let it be admitted.

Mr. SHARTEL: I will call the court's attention to this: (reading) "That about the same time, said William C. Renfrow and the plaintiffs discovered that one Springmeyer and (blank) were in possession of said tract of land and were plowing thereon, and were claiming to have a valid lease to said tract of land for the year 1901, and that their said occupancy constituted a lien and incumbrance upon said tract of land, and that thereupon the said defendant, William C. Renfrow, agreed to free said tract of land from the possession of the said alleged tenants, and made several attempts to induce said alleged tenants to vacate and leave said tract of land, but said Springmeyer and (blank) the alleged tenants as aforesaid, refused so to do."

Q. You never have asked Mr. Shields for the $500 back?

A. No sir, I never did.

Q. You never have asked to have it refunded?

A. No sir.

Q. Never have asked Governor Renfrow to refund it?

A. No sir.

Q. And never asked Mr. Edwards to refund it?

A. No sir.

Mr. HOWARD: You are also ready to pay the taxes or any proper

penditure that the court may decree that you should pay, or that e defendants have expended?
A. Yes sir.
Mr. HOWARD: You say that when Mr. Springstine left these prem-s you took possession?
A. Yes sir.
Q. And Mr. Wright, one of the plaintiffs, has been living there ce on the premises, has he not?

Mr. WELLS: Objected to on the ground that that was long after this suit was filed.
The COURT: I do not see that it is material.

DAN WRIGHT was the next witness called to the stand by the aintiffs, and gave the following testimony under oath:

By Mr. HOWARD:

Q. You are one of the plaintiffs in this case, are you, Mr. Wright?
A. Yes sir.
Q. Did you have any conversation with him, or hear any con-sation between him and any other person, with reference to this nsaction with Mr. Renfrow, at or about the time that that Mr. nfrow was here?
A. Yes sir.
Q. Where was it?
A. It was on Robinson Street in front of Owen & Welsh's office
Q. That was about how long after the money had been paid by Land to Mr. Shields?
A. Oh, two or three days, I should judge.
Q. Who was with you?
A. Why, Mr. Lee was standing on the walk if I remember right, l Mr. Edwards came along.
Q. What was said?
A. I believe the first word that was said was that Mr. Lee kind of led him and said that he wanted to notify him that he had bought t land down there, and that he didn't want him to interfere with n; he had understood that he was interfering with the trade; l Mr. Edwards denied it.
Q. Did you have any conversation with him at any other time, or e you present when any was had?
A. I don't believe I was; I don't recall any other conversation.
Q. Was anything further said in that conversation there between Lee and Mr. Edwards?
A. Why Mr. Edwards—Mr. Lee said that he thought he was erfering with the trade and Mr. Edwards denied that he was, and Lee said "We think you are," and Mr. Edwards said "You had as well call me a liar" and Mr. Lee said, "Well, let it go that way," "let it go at that."
Q. Well, was anything said about what would happen if he interfered with it or broke it up?
A. Well, Mr. Lee said that he would have a lawsuit if he bought t land; that we expected to get title to it.

Q. Did you see Mr. Renfrow while he was here?
A. Yes sir.
Q. Where did you first see him?
A. I saw him in George Shields' office, the first time I ever saw him.
Q. What was said there?
A. I went in there to see Mr. Shields——
Q.—by the way, you made this trade yourself, didn't you?
A. Yes sir.
Q. All right, go ahead.
A. I went in to see Mr. Shields about this man that was down there on the land——
Q. Well, was Mr. Renfrow there?
A. Yes sir.
Q. Was anything said between you?
A. They were back in the back part of the building and I called Mr. Shields out in the front, and he says "Here is Mr. Renfrow in here, you can speak to him about the matter;" he says, "Come back and I'll introduce you to him," and so I was introduced to Mr. Renfrow and I told him the trouble.
Q. What did Mr. Renfrow say?
A. Well, he says, "I am here to straighten that matter all up," and he says—I told him that I had been down doing some work on the land and that this man was plowing up stakes down there; well, he says, "Go ahead and go right on doing the work just as tho' you had a deed to it" and he says "I'll go down and tend to that fellow." Well, I says, "We aim to have this land surveyed and the man is plowing the stakes up just as fast as we are driving them down." Well, he says, "I will go right down there." And I went on back and he and Mr. Shields drove down there; and he hailed this old gentleman that sits over there, and told him that he had sold that land——

Mr. WELLS: Were you there then; were you down there at that time?

128 A. Yes sir.
Q. Go on.

A. He said that he had sold the land to these parties and that he had come down there to turn it over to them, and that is about the extent of the conversation. Now, he was not talking to me directly, but I was close by and heard that conversation.
Q. Well, did you talk with him at any time afterwards?
A. No sir, I think not.
Q. Did you meet him at any time after that—Renfrow?
A. Why, I believe I did at the hotel when they were down there, but I don't remember much about that conversation, because the other parties was kind of taking the lead in the matter, and I could not state what was said there or anything about it; and I think I was up there to Mr. Shartel's office, but I could not say what was said or anything about it.
Q. What was done on that land between the time that you bought it and the time that Mr. Renfrow went away,—what did you do?

A. Well, I hired a man to take the fence down.
Q. Was anybody out there when you were taking the fence down?
A. Yes sir.
Q. Who?
A. Not when I went to taking the fence down there wasn't.
Q. Did you see any signs of anybody living there?
A.—(cont)—but they came there just before I got finished taking the fence down.
Q. Who came there?
A. Mr. Springstine.
Q. Had you seen him before that?
A. No sir.
Q. Did you have any information that he was there or claiming any rights there before that?
A. No sir, I didn't know anything about him.
Q. What did you do with the posts?
A. I hauled them up home to my house.
Q. Where did you live at that time?
A. I lived at 407 East Fifth.
Q. You did not live on that land?
A. No sir.
129 Q. Now what else was done there?
A. Why, I put a man to levelling down some ground and breaking down some ridges.
Q. Was anything done about surveying it by you?
A. No; as to the surveying part of it, I didn't have anything to do with it; there was lots of stakes there all over the ground.
Q. Well, you knew what they were there for, didn't you?
A. Yes sir.

Mr. HOWARD: I believe that is all.

Cross-examination.

By Mr. SHARTEL:

Q. When you were taking those posts out did you meet Mr. Springstine?
A. I did.
Q. He walked over there where you were?
A. Yes sir.
Q. Did he say anything to you?
A. Yes sir.
Q. What did he say?
A. He said they were his posts.
Q. Did he say anything else?
A. Why at the same time he said a lot of stuff—I don't remember what it was.
Q. Did he notify you to go ahead or did he notify you to quit?
A. Well, I don't know what he did there about that.
Q. Well, did he tell you to quit?
A. Well, I say I don't know what he did say about that; he told me to quit digging those posts.

Q. Did he say anything about what he was doing there?
A. No sir, he didn't; he might have but I don't remember.
Q. You paid Mr. Springstine for those posts later?
A. Well, I didn't, but I paid my proportional part of the expenses but I understand that Mr. Land did it.
Q. You put a man in there to levelling the ridges, what did Mr. Springstine do to him?
A. Well, he didn't bother with him.
Q. Well, what else did you do?
A. Well, he went to plowing that evening I believe.
130 Q. The first day you surveyed it?
A. No, all the surveying had been done I think probably a day or two.
Q. You don't know what took place while the surveyor was down there, do you?
A. No sir.
Q. You don't know whether he ran them out or allowed them to go ahead?
A. No sir.
Q. Did you quit taking down the posts when Mr. Springstine told you this?
A. No sir, I went ahead and took them all down.
Mr. HOWARD: How many posts had you taken down when he came?
A. I had them all down but about four or five.

Mr. HOWARD: I think that is all, if the court please, until we get Mr. Renfrow.
Whereupon, with the above exception, the plaintiff rests.

131 In District Court Oklahoma County, Okla.

OSCAR D. HALSELL ET AL., Pl'ffs.
vs.
W. C. RENFROW ET AL., Def'ts.

Demurrer to Evidence.

Come now the defendants and demur to the evidence of the plaintiffs herein on the ground that same does not prove facts sufficient to entitle said plaintiff to any recovery herein.

SHARTEL, KEATON & WELLS,
Att'ys for Def'ts.

Endorsed: #2856—Oscar D. Halsell *et al. vs.* W. C. Renfrow *et al.*—Demurrer to Evidence—Filed in District Court, Oklahoma County, O. T. May 28, 1903, B. D. Shear, Clerk, By Will H. Clark, Deputy.

132 Whereupon, it is agreed that a demurrer shall be considered filed by the defendants to the evidence of the plaintiffs, which said demurrer is overruled by the court, to which the defendants except.

P. W. SPRINGSTINE (the first witness for the defendants) is thereupon sworn, and testifies as follows:—

By Mr. SHARTEL:

Q. You may state you- name to the Court?
A. I have.
Q. Where do you live?
A. I live now at Norman.
Q. Where did you reside in February and March 1901?
A. Down on Chickasaw Street.
Q. Do you know the land in controversy in this case?
A. Yes.
Q. Where did you reside with reference to that land at that time?
A. Right on the south side: there was just a half block between where I lived and the——
Q. Well, was anybody living on that land at that time?
A. No sir.
Q. Any house on it?
A. No sir.
Q. What condition was it in with regard to improvements?
A. At the time I left there or when I taken possession of it?
Q. Well, at the time in February, just before the time that these plaintiffs came down there and surveyed it?
A. Well, I had.—I don't remember exactly, 40 or 60 head of hogs there: I had a lease on it that I got through a gentleman down here on Main Street——
Q. Phil Kramer?
A. Phil Kramer; he leased it to me and he said—he said Mr. Cunningham——
Q. Never mind what he said.—
A. Well, I got the lease and I had possession.
Q. How long had you had this land?
A. Well, I tended it the year before, part of it.
133 Q. Did you have something planted on there before?—the year before?
A. Yes sir, I tended part of it.
Q. What did you have?
A. Well, I had radishes and lettuce and onions.
A. That year Mr. McEachin had the land and he let me have part of it; he had the whole of it the year before, and he let me have part of the land, and on the year following when I had it, I let him have part of it.
Q. Do you remember the circumstance of some surveyors coming out there?
A. Yes, they came down there and went to surveying.
Q. Just tell the court what took place at that time?

A. Well, I had a man there plowing and they came over to where he was at work and he said they ordered him off the place—some of the parties—and I went over to ask the parties what right they had there, and they said that some parties had bought the place, and I ordered them off and said they had to get off and the surveyors said they would not go away, and I said "Well, set all the stakes and I will plow them up" and this German fellow I had there plowing, he plowed them out, as fast as they set them in he plowed them out. And then after that Mr. Wright, that gentleman sitting over there came down while the fellow was plowing in the field, and went to work to take the posts down, and so I quit my work then and went to Mr. Wright and took this German fellow along, and objected to him taking the posts down. I told him that they were my posts and the wire too, and after awhile he went off.

Q. After that time did any of them come back any more?

A. Yes sir, Mr. Shields, I think his name is—a real estate man—and Governor Renfrow came down there in a buggy, and Governor Renfrow said I had no right there and I told him I had, and he said "Who did you get your right from" and I says, "I have my lease" and showed it to him. "Well" he said, "he had no right to lease it to you." "Well" I said, "I got it and I have got possession
134 until the 1st of January, and I would like to see you put me off"; and he said that they would put me off and drove away.

Q. What did you do then?

A. Why, I went ahead tending the place.

Q. Did you cultivate the entire tract?

A. There was a portion of the north side that I didn't cultivate.

Q. Who cultivated that?

A. I had the lease, but part of it I leased to other parties.

Q. Who were they?

A. One of them was old man Bonordert (?), down here on Chickasaw and another one was a man named Cooper, and the other one is McEachin here; they was the three parties that had land of me on that place.

Q. How long did you remain there?

A. I lived on the place until sometime last December was a year ago. I don't remember the date.

Q. Now after Mr. Edwards bought this land did you have any transaction with him?

A. Well, Mr. Edwards came to me and he said that he had the land, he had bought the land, and he wanted to know what I would quit the place for, and I told him $500, just as I had told the other parties, and he said he would give it and he paid me $400 and paid $100 to John Wright my attorney.

Q. And then what was done?

A. Well, suit was begun then and I still had possession, and Mr. Edwards told me to keep possession, and I rented it back from Mr. Edwards.

Q. And how long did you stay there that time?

A. I stayed there until December, and then I left and turned the

place over to Mr. Edwards, and went to his office and gave him up the place, and told him that I would go and live on my own place.

Q. One other thing, you went to my office about that time, didn't you?

135 A. Yes sir, I remember distinctly that you sent for me, and I left my work and came up there to your office.

Q. You were in company with whom?

A. Well, I don't remember as to that, but I think Mr. Land was there, and I know Governor Renfrow was.

Q. Did somebody come with you?

A. John Wright.

Q. He was your attorney?

A. Yes. And they wanted to know if I would compromise it, and you made a tender to me of $200 and I told you that $500 was the lowest.

Q. Was there any other effort made to arbitrate?

A. No sir, one time when Mr. Renfrow was here, to keep out of a fuss I offered to arbitrate it and said I would settle it to day and said if you would pick one member, I would pick one and they could pick one, and they refused to do it, and so when you sent for me, I said $500 or nothing.

Q. Was the subject of arbitration mentioned in my office while you were there?

A. I don't remember that it was; I could not say whether it was or not there; but I know that I proposed that myself, and told them that if they would finish it up that day I would arbitrate it.

Cross-examination.

By Mr. HOWARD:

Q. You haven't that lease with you, have you?

A. Why, it is here some place, haven't you or Mr. Edwards got it?

(Mr. Edwards produces same and hands it to Mr. Howard)

Q. You say that you let some body else have part of this land?

A. Yes, that lease was made to I and Mr. Bidsche, and then afterwards Mr. Bidsche stepped out and I had full control of the land, and I let the parties that I have just named have part of the land.

Q. And they farmed it under this lease?

A. Yes sir.

Q. Who did you pay this lease money to?

A. The lease money; I never paid it at all.

136 Q. Never paid it at all?

A. I gave my notes I think, as well as I remember, they were on the 1st day of August for $90 and on the first day of December for $90, making $180 for the tract,—that was Bidsche and I. Then after Mr. Edwards bought the place from me, it was the understanding that I had to have them back.

Q. Who gave you that understanding?

A. Mr. Kramer; he never gave the notes up until after the thing was settled.

Q. Mr. Kramer offered to give you those notes back long before that, didn't he?

A. He came and wanted me to take the notes back; he sent a messenger boy to me for me to come up to his office, and I went up and he said he understood that Mr. Cunningham had sold the land to Governor Renfrow, and he would like to withdraw the lease, and I said I would not do it.

Q. What were you cultivating there?

A. I was cultivating potatoes, and onions and radishes and corn.

Q. So you wanted, in addition to the $180 that you were to pay, about $500 to get off?

A. Why, of course, because it damaged me that much.

Q. How many acres had you plowed in February?

A. Well, I don't remember now; there was eight or ten acres of it.

Q. What did you have planted?

A. The potatoes were planted, and beets and radishes and onions.

Q. And you thought about $500 would be about right, did you?

A. It wasn't for the work that I done, but I was making my living there and there was no other land to rent.

Q. How much did you realize out of it that year?

A. I didn't keep any memorandum of it.

Q. Did you sell $500 worth that year?

A. I don't think I did.

Q. Did you sell as much as $200?

A. I could not tell. There was a drouth that year.

Q. Well, do you think you sold $200 worth all told?

137 A. Well, I don't think that I did—I could not say a thing about it.

Q. Well, when Mr. Renfrow came down there what did he say to you?

A. I could not say word for word.

Q. He wanted you to get out did he?

A. Yes, he told me to get off or he would put me off, and I said I had a right there, and he said I hadn't and that he had sold the place, and I showed him my lease.

Q. Well, up at Mr. Shartel's office you had learned that he had sold it, hadn't you?

A. Yes sir; I knew it before.

Q. You knew that he had sold it to these people?

A. Yes, that was my understanding, but he never told me that I know of.

Q. Now, did Mr. Edwards pay you $500?

A. He paid me $450 and $50 to John Wright that I had hired.

Q. When did he do that?

A. It was along in February, some time, I think it was; it was right after he had bought the place.

Q. Right after he had bought it?

A. Yes sir.

Q. You were still on the place and tending the crop were you?

Q. Just the same as if he had not given you the $500?

A. Yes sir.

Q. What did he give you the $500 for?
A. For possession.
Q. Well, you still had possession, didn't you?
A. Yes.
Q. And you got the $500 too?
A. Yes, I would have got another $500 if he would have given it to me.
Q. And you stayed practically the whole time out there on that land?
A. I stayed until December.
Q. You stayed out there all the time on the land cultivating your crop just the same as if he hadn't paid you the $500?
The COURT: Is that material?
138 Q. What became of those stakes that you plowed up—did you plow all of them up?
A. No sir, not all of them because Mr. Edwards paid me before I got all of them up.
Q. Did Mr. Edwards take up the rest of them?
A. Not that I know of.
Q. Did you see the surveyor back there any more after that first time?
A. Not after he bought it.
Q. Did Mr. Edwards give you cash or a check?
A. He gave me cash.—well, I think he gave me a check.

Whereupon said lease referred to, having been marked "Ex. H" and duly offered and admitted in evidence, is made a part of this record and is in words and figures as follows, to wit:

This lease made this 3rd day of December, 1900, by and between G. S. Cunningham, by his agents, Johnson & Krauer, first party, and P. W. Springstine and Edward Bidsche, second parties, Witnesseth, that said first party in consideration of the covenants and agreements hereinafter set forth does by these presents demise, lease and let unto the second parties the following described property situated in the county of Oklahoma, Territory of Oklahoma, to wit: The land lying near the southwest corner of Oklahoma City known as the Cunningham tract, a part of the Orne claim, comprising about 36 acres or more, and which was heretofore cultivated by M. McEachin. To have and to hold the same to the second parties from the first day of December, 1900, to the first day of December, 1901. And said parties in consideration of the premises herein set forth agrees to pay the first party as rental for the above described premises the sum of one hundred eighty dollars, $90 on August 1st, 1901, and $90 on December 1st, 1901; and it is expressly understood that
139 if a survey should show more than the stipulated 36 acres in this tract, the said second parties are to pay $5 per acre for each additional acre in excess of 36 acres, which said additional payment shall be made in two parts on the first days of August and December, 1901, as above provided for.

It is further agreed that the second parties shall not assign this lease or sublet the premises or any part thereof without the written

consent of the first party. And it is also agreed that upon the failure to pay the rentals or any part thereof as herein provided or to otherwise comply with the terms and conditions of this lease by the second parties, then the first parties may declare this lease at an end and void and re-enter and take possession of said premises.

It is further agreed by and between the parties hereto that if the second parties erect any buildings or fencing on the property herein leased they shall be at liberty to remove the same from the premises at expiration of this lease. Further, should all the crops grown on this land not be harvested at the expiration of this lease, permission is given the second parties to remove the same, not extending beyond January 1st, 1902.

It is further agreed that at the end of this lease, or sooner determination thereof, the second parties shall give peaceable possession of the premises to the first party in as good condition as they now are, the usual wear and tear and damages by the elements alone excepted. And upon the non-payment of the rent or any part thereof at the time and as above specified said first party may distrain for rent due and declare this lease at an end and void, and re-enter and recover possession by forcible entry and detainer and notice of such election and demand of possession are hereby waived. This lease shall not be considered renewed except by agreement of the parties.

The covenants and agreements of this lease shall extend to and be binding upon the heirs, executors and assigns of the parties hereto.

140 Witness our hands and seals the day first above written.

G. S. CUNNINGHAM,
By JOHNSON & KRAMER, *Agts.*

(Stamp) 25c.

P. W. SPRINGSTINE,
EDOUARD BITSCHE.

Endorsed: We hereby assign all our interest to the within lease to R. J. Edwards, this March 9th, 1901. P. W. Springstine, Edouard Bitsche.

Redirect examination.

By Mr. SHARTEL:

Q. Is that the contract you had with R. J. Edwards? (handing witness paper).

A. This is the contract that he and I had when I went on the place after he bought it.

Mr. SHARTEL: We offer that in evidence. (marked "Ex. 1")

Q. I understood you to say that Mr. Edwards first bought you off and then when this law suit started told you to go ahead and stay there?

A. He came back after he had bought me off and I was moving my house,—had part of it moved off the place, and gave up possession according to the contract; and he came back and said, they have

sued me, and if you will take it and keep the weeds down under one condition and I says, what is that, Judge——

Mr. HOWARD: Wait a minute, objected to as incompetent and immaterial.

Q. Well, that conversation took place just about the time this second contract was made, didn't it?
A. Right at the time, right at the time.
Q. And you were in the act of moving off at that time?
A. Yes.

Mr. SHARTEL: This is the lease between Mr. Edwards and Mr. Springstine for a part of this property, made on the 29th day of April. (Referring to Ex. 1.) The same is in words and figures as follows:

141 TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

An agreement between R. J. Edwards, first party, and P. W. Springstine, second party, whereby first party has permitted second party to plant certain garden crops upon that portions of ground in Oklahoma City known as Edwards' second addition to Oklahoma City, as follows:

Lots one (1) to sixteen (16) in block eight (8), and all that portion of ground in said addition west of Higgins' Ave., being understood that said second party is using said grounds subject to rights of first party, and that the said first party is deemed by said parties to be in possession of all of said land and to have the absolute right to go upon any portion thereof and take possession in said cultivated part at any time he may choose to do so, the second party merely having the use of the same without consideration and subject to the will of the first party. Being the intention of the first party to permit the second party to cultivate and gather his crops from said land, providing said first party has no immediate use for said grounds, or need of them, but in case he should have any use for said grounds, he may go ahead and dispose of the same in accordance herewith.

Witness our hands this 29th day of April, A. D., 1901.

P. W. SPRINGSTINE.
R. J. EDWARDS.

R. J. EDWARDS, was the next witness called to the stand by the defendants (being one of them) gave the following testimony under oath:—

Mr. Mr. SHARTEL:

Q. State your name?
A. R. J. Edwards.
Q. You are one of the defendants in this case?
A. Yes, sir.
Q. I believe you have already identified this deed, as the deed you got from W. C. Renfrow?
A. Yes sir.

Q. And stated that the transaction was closed in Joplin, Mo.?

112 A. Yes sir.

Q. You may state what that document is. (handing witness paper)

A. It is a note that I gave him, in part payment for the land.

Q. And that one? (handing him another)

A. It is a mortgage on some ground up in the northwest part of town, to secure the note.

Q. What is that document? (handing him another)

A. That is the check that I gave in payment for the note and the release, when it was sent to the State National Bank here; it included the face of the note and the interest up to that time.

Q. (handing him another) What is that?

A. That is the check that I gave him at the time I bought the land. (Same are marked Exhibits one to five inclusive.)

Q. What is that document?

A. That is the release of the mortgage on my property given to secure the note.

Q. And what is that? (another)

A. That is the check I gave Mr. Springstine in part payment of this lease, for possession of the land. (marked Exhibits 6 and 7)

Q. How did you pay the remainder of this money to Mr. Springstine?

A. I think I paid it in a check.

Mr. SHARTEL: We offer in evidence the note for $5680, dated Joplin, Missouri, Mch. 2nd, 1901. Six months after date, we or either of us, each as principal, promise to pay to the order of W. C. Renfrow, five thousand ($5000.00) Dollars, for value received, payable at the Joplin National Bank, of Joplin, Mo., with interest at the rate of ten (10) per cent. per annum from date, and if the interest be not paid annually to become as principal and bear the same rate of interest; and we hereby waive notice of extension.

R. J. EDWARDS.

P. O. Address, Oklahoma City, O. T.
No. 59467.

Endorsed: W. C. Renfrow. Pay State National Bank or Order. Joplin National Bank, Joplin, Mo. A. H. Waite, Cashier.

113 Also the check for $5298, paying the above note with interest: Oklahoma City, Okla. 10-7-1901. The State National Bank. Pay to J. L. Wilkin, cashier, or bearer, $5298.60. R. J. Edwards. Renfrow note.

Stamped paid on the same date by State National Bank.

We also offer in evidence the check for $5000, dated, Oklahoma City, Okla., March 2, 1901. The State National Bank. Pay to the order of W. C. Renfrow, $5000. Five Thousand Dollars.

R. J. EDWARDS.

(Stamp.)

Endorsed: W. C. Renfrow. Endorsements guaranteed. Pay Nat. Bank of Commerce, St. Louis, Mo. or order, Joplin National Bank, Joplin, Mo. A. H. Waite, Cashier. Stamped paid by the State National Bank March 6th, 1901. Oklahoma City, Okla.

We also offer in evidence the mortgage executed by R. J. Edwards to secure the note described.

The same is as follows:

Mortgage of Real Estate.

This indenture, Made this 2nd day of March, A. D. 1901, between R. J. Edwards of Oklahoma County, in the Territory of Oklahoma, party of the first part, and W. C. Renfrow of Oklahoma County in the Territory of Oklahoma, party of the second part.

Witnesseth, That the said party of the first part in consideration of the sum of Five Thousand ($5000.00) Dollars, the receipt whereof is hereby acknowledged do, by these presents, grant, bargain, sell and convey unto said party of the second part his heirs and assigns all the following described real estate, situated in the county of Oklahoma, Territory of Oklahoma, to wit: Commencing at the northwest quarter of section thirty-three (33) Tp. twelve (12) N. Range three west. Thence east along said section line to the intersection of the west line of Hudson Street. Thence south along the west line of said street to the north boundary line of Eighth (8th) Street. Thence west along said north line of said street to the west line of said quarter section. Thence north along said line to the point of beginning.

144 To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining forever. This conveyance is intended as a mortgage to secure the payment of one promissory note of even date herewith. One for $5000.00 due on or before September first next, made to W. C. Renfrow, or order, payable at Oklahoma City, O. T., with 10% interest per annum, payable semi-annually and 10 per cent. additional as attorney's fees in case of legal proceedings to collect and signed by R. J. Edwards.

Said first party hereby covenants that he is the owner in fee simple of said premises and that they are free and clear of all incumbrances. That he has good right and authority to convey and encumber the same and he will warrant and defend the same against the lawful claims of all persons whomsoever. Said first party agrees to pay all taxes and assessments lawfully assessed on said premises before delinquent.

Now if said party shall pay or cause to be paid to said second party, his heirs or assigns said sum of money in the above described note mentioned together with the interest thereon according to the terms and tenor of said note and shall pay such taxes and assessments then these presents shall be wholly discharged and void otherwise shall remain in full force and effect. If any and all taxes and assessments which are or may be levied and assessed lawfully against

said premises or any part thereof are not paid before delinquent then the mortgagee may pay such taxes and assessments and shall be allowed interest thereon at the rate of 8 per cent. per annum until paid and this mortgage shall stand as security for all such payments; and if such sum or sums of money or any part thereof is not paid when due or any taxes or assessments are not paid before delinquent the holder of said note and this mortgage may elect to declare the whole sum or sums and interest thereon due and payable at once and proceed to collect said debt including attorney's fees and to
145 foreclose this mortgage; and shall become entitled to possession of said premises.

Said first party waives notice of election to declare the whole debt due as above stated and also the benefit of stay, valuation or appraisement laws.

In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.

R. J. EDWARDS.

(One dollar revenue stamp.)

STATE OF MISSOURI, *Jasper County, ss:* .

Before me, John C. Keenan, a notary public in and for said County and State on this 2nd day of March, 1901, personally appeared R. J. Edwards to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes herein set forth.

Witness my hand and official seal the day and year above set forth.

[SEAL.] JNO. C. KEENAN,
Notary Public.

My Commission Expires Oct. 31, 1901.

Endorsed: Mortgage of real estate from R. J. Edwards to W. C. Renfrow.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 13th day of March, 1901, at 4:30 o'clock P. M. and duly recorded in book 24 on page 32.

[SEAL.] C. J. BOWMAN,
Register of Deeds.

Mr. SHARTEL: We also offer in evidence the check for $300 paid to Mr. Springstine on March 9th, and the release of the mortgage just offered, dated October 8th. The same are as follows:—

(Check) Oklahoma City, Okla., Mch. 9, 1901. The State National Bank. P. W. Springstine, $300.00. Three Hundred Dollars.

(Stamp, Rev., 2¢. Cancelled)

R. J. EDWARDS.

Endorsed: P. W. Springstine. (Stamped) Paid, The State National Bank, Mar. 9, 1901. Oklahoma City, Okla.

146 (*Release.*)

Release of Mortgage.—In consideration of the debt named herein I do hereby release Mortgage made by R. J. Edwards to W. C. Renfrow, and which is recorded in Book 24 of Mortgage, page 32, of the records of Oklahoma County, Territory of Oklahoma, covering the part of northeast quarter of section thirty-three, township twelve, of range three west, as described in said mortgage.

Witness my hand, this 8th day of October, 1901.

[SEAL.] W. C. RENFROW.

In the presence of
WEALTHY I. JOHNSON.

Endorsed: Release of Mortgage. W. C. Renfrow to R. J. Edwards.

THE TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Filed in the clerk's office of said county, the 14th day of Oct., 1901, at 9 o'clock, 30 minutes, A. M. Book 38, page 243.

[SEAL.] C. J. BOWMAN,
County Clerk.

Q. This $300 check to Mr. Springstine, I believe you say was given in part payment of your settlement with Mr. Springstine?

A. Yes sir.

Q. And how much did you pay him altogether?

A. Four hundred and fifty dollars.

Q. Did you pay any additional sum to Mr. Wright or to any other person?

A. Fifty dollars to John Wright. That is, they owed him an attorney's fee and they told me to pay him that.

Q. Now after that time what did you do with these premises; what disposition was made of that place that year?

A. Well, after I had got it, this suit was brought, and they did not include me at first, but as soon as they amended to include me, I told Mr. Springstine, well, I can't sell it,—it had been platted and surveyed and blue prints made and everything, and I said I can't go ahead and sell it, and so you may as well go back there, and get what you can out of it——

147 Q. Was that the time that you made this written contract with him?

A. Yes sir.

Q. At that time did you make any lease or contract with other parties?

A. Yes sir. (hands him paper) This is a contract that I made with Mr. Cooper, that I made simultaneously, or along about that time. (handing him another) That is to Mr. Stetch.

Mr. SHARTEL: We offer all these letters and that contract in evidence.—See next page for letter and contract—(No opportunity given to mark these papers now)

Q. Who has paid the taxes on this property since that time Mr. Edwards?

A. I have.

Q. You may state whether anyone interfered with your possession with that property since that time?

A. No sir, not until along in January, 1902.

Exhibits Referred to on Previous Page.

Contract Between Cooper and Edwards.

TERRITORY OF OKLAHOMA, *Okla. County.*

I, J. M. Cooper, hereby relinquish all right of the claims to any possession whatsoever to any lands which I have occupied and tilled under a verbal understanding with one P. W. Springstine under the supposed right held by him from R. J. Edwards, the owner thereof.

I hereby acknowledge that I am there purely at the sufferance of R. J. Edwards and agree to remove the fodder thereon not longer than a week from the date hereon. I hereby renounce all right or claim of any kind whatsoever to the possession of said land.

I acknowledge that R. J. Edwards is the rightful owner and possessor thereof.

(Signed) J. M. COOPER.

Letter from Renfrow to Halsell on Date of Transmission of Deed to the Bank.

JOPLIN, Mo., *Feb.* 25, 1901.

"Mr. Oscar D. Halsell, Oklahoma City, O. T.

MY DEAR SIR: I have this day mailed to the Western National Bank the deed to the Cunningham tract, and have instructed them to turn same over to you upon your depositing $9,500 to my credit, and $500 to the credit of George J. Shields, and I shall expect this to be done between banking hours on Wednesday, and the 27th inst., as Mr. Everest notified me on Saturday night that he would expect me to perfect title within thirty days, and was kind enough to extend me that length of time (only, I presume).

148

I have concluded that I will bring this matter to a close at once and shall give you the opportunity of taking up the deed on Wednesday, or will consider the proposition at an end.

Trusting that you will give this immediate attention, I am

Most respectfully, W. C. RENFROW.

P. S.—I write Mr. Shields to-day and instruct him fully in the matter."

Q. What was done at that time?

A. Well, I had been away on a visit and when I came back I went down there and saw that some people were building a house there.

Q. Did you find out who it was?

A. Dan Wright.

Q. Had you been up to that time in the peaceable and undisputed possession of that property?

A. Yes sir.

Q. What conversation, if any, did you have with Mr. Wright at that time?

A. I asked him what he meant by slipping in on that land during my absence, and he said, the Dutchman's year is out and we had a right to come in here; our lawyers told us we could come in.

Q. Did you ever consent to their going on there?

A. No, I protested and I tried to get an injunction, and did everything I could to stop it; I did stop them; I finally got in with some men and headed them off and got possession of all of it; took down their wire——

Q. You have that application for injunction still pending here at this time?

A. Yes, still pending here in court.

149 Q. That is not this case?

A. Yes, part of this case, I believe.

Q. How long had you been negotiating with Mr. Renfrow for the purchase of this property?

A. How long, do you mean, before I bought it?

Q. Yes.

A. Oh, three weeks or a month. I had some mining interests at Joplin and I was there frequently and he told me of this piece of property and I came down here to look over it and submitted him an offer on it, and had been negotiating for the property, I will say three weeks or a month before; that is, he made me an offer of what he would do, and told me to come up here and look it over and I told him I would look over it and make him an offer.

Q. Did you hear the testimony of Mr. Lee and Mr. Wright about a conversation you had with them near Owens and Welsh's office?

A. Yes sir.

Q. Did you ever have such a conversation?

A. I had a conversation.

Q. What was that conversation?

A. The conversation as I recollect it was: I was in a buggy driving along and they stopped me and Mr. Lee wanted to know if I was figuring on that place, and I told him I was. Well, he says, "You are interfering with me" and I says, "I don't know that I am." I says, "I was here first; I have been negotiating for that land for sometime." "Well" he says, "You are interfering with us" and I says, "I am not," and he said, "Well, you are" and I said "You might as well call me a liar," and he said, "Well, you can take it at that," or "You can take it just as you want to," or something that way.

Q. Did he say anything in that conversation about having bought the land?

A. On that day?

Q. Yes.

A. No sir.

Q. Did they say anything in that conversation about bringing a lawsuit if you did buy it, or anything of that kind?

A. No sir.

150 Q. Did you hear Mr. Everest's statement about a conversation in front of his office or on the stairway?

A. Well, that was on the afternoon, you see, after I bought this land, I was on my way from Chicago, and I took the deed with me to Chicago, and I got back here on the afternoon of the 8th on the 3:30 train—the afternoon train. And I don't remember having any conversation with Mr. Everest that afternoon. I might have had it; I don't deny that I did have a conversation with him; I know that afternoon I was up in the land office building; I went up to see John Wright, and Springstine and Bitsche and those fellows, and then I went from there down right across to the register of deeds' office. I might have had a conversation with Mr. Everest there that afternoon.

Q. Have you heard the testimony of George Shields?

A. The affidavit?

Q. The affidavit.

A. Yes.

Q. Did you have that conversation?

A. Well, now, I don't remember what it was he said.

Q. Well, did you have a conversation with Mr. Shields about it?

A. Why I had a conversation with Mr. Shields, yes.

Q. Had you been negotiating this purchase in any way with Mr. Shields?

A. No sir.

Q. Had you been negotiating with any agent?

A. No sir.

Q. Did you hear the conversation with the witnesses in regard to your having taken dinner with Governor Renfrow at the Lee Hotel on the afternoon that he left here?

A. Yes sir.

Q. Did you take dinner with him?

A. I expect I did; I don't know whether I did or not; I think I took one or two meals with him at the Lee Hotel when he was here.

Q. Did you ever have any conversation with Governor Renfrow about the negotiations with these plaintiffs in this case?

A. I had a conversation with him in regard to my negotiations with him.

151 Q. Well, did he inform you at that time that he was negotiating with these other parties?

A. Why he said that he had negotiations on.

Q. Did he say anything at that time about going ahead with the negotiations with you?

A. Well, he said he had not done anything yet.

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial.

The COURT: Was this conversation had at the time he took dinner with him at the hotel?

Mr. SHARTEL: Yes.

The COURT: He may go into that conversation. Objection overruled. Plaintiffs except.

WITNESS: I don't remember John what the conversation was; we had a mining proposition there together, and we talked on that part of the time.

Q. Well, did Governor Renfrow ever at any time inform you that he had sold this property to these parties?

A. No sir.

Mr. HOWARD: We move to strike that out as incompetent.

Motion denied. Plaintiffs except.

Q. Did he ever give you any information about this trade with these parties, except the fact that he was negotiating with them for the sale?

Mr. HOWARD: Objected to as incompetent, leading and as self-serving. Objection overruled. Plaintiffs except.

A. No sir.

Q. Had you ever been informed by anybody that these other parties, the plaintiffs in this case, had bought this property?

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial, leading, self-serving. Overruled. Plaintiffs except.

A. I had been informed that they had been negotiating; no, I never had been informed that they had bought it. They were just like I was, I supposed, they were trying to.

Q. At the time you bought this property had you ever been informed by anyone that they claimed to have bought it?

152 Mr. HOWARD: Objected to as leading. Overruled. Exception.

A. No sir.

Q. Had Governor Renfrow discontinued the negotiations with you——

A. —Never, no sir.

Q. Well, did he say anything about stopping any further trade, talk with you on account of other negotiations pending?

A. Well, he didn't have anything to do with me; he didn't have anything further to do with me, or my negotiations, until he wired me from Joplin.

Q. Did you go there in response to that wire?

A. Yes sir.

Q. Did he inform you at that time the state of the negotiations with the other parties?

Mr. HOWARD: Objected to as leading, and self serving. Objection overruled. Plaintiffs except.

A. Yes sir.

Q. Without calling for the specific conversation you had with hi
give the substance of the information you received from him w
reference to those negotiations?

A. Well, he said that he had tried to make a trade with those
lows and that they never did agree and could not get together, a
that he had made two or three propositions and he could not
anything with them, and that it was no use trying to trade w
them, and that I could have the land.

Mr. HOWARD: We move to strike out the answer as incompet
and self serving. Motion denied. Plaintiffs except.

Mr. SHARTEL: That is all.

Cross-examination.

By Mr. HOWARD:

Q. You say that you had been negotiating with Mr. Renfrow
some weeks with reference to this?

A. Yes sir.

Q. How had those negotiations been carried on?

A. Well, they were by word of mouth at Joplin and then I
written him; he had at that time a written proposition from me
was afterwards developed that it was at that time; at the time t
these telegrams passed, I had written him from here, tell
153 him what I would do.

Q. Now did Mr. Renfrow, or not, tell you, when he
here, that he had come here to close up the trade which he had n
with these other parties?

A. Well, he didn't tell me in that language,—yes—partly,
and partly no.

Q. He told you who the people were?

A. He told me that he was on a trade for the land; he didn't
me who.

Q. He did not tell you that he had come down to close up
trade?

A. No sir, he told me that he had come down here on negotiat
for the land.

Q. He told you that he had made a trade through George Shi
did he not?

A. No. I don't know whether he told me that or whether I fo
that out in some other way; I guess possibly he told me.

Q. You say you did not say anything about buying the land w
Mr. Renfrow was here?

A. Well, I made my offer, and he said that he would not cons
it at that time, and would not and did not.

Q. Now, when he went away did you write or telegraph to hi
did he write or telegraph to you first?

A. I think I wired him that I was going to Chicago, and tha
there was any need or any chance of doing anything I would
off at Joplin.

Q. Did you get any telegrams or letters from him?
A. No, I say I wired him, I don't know whether I wired or wrote him.
Q. Have you got any telegram or letter sent by you to Mr. Renfrow or by him to you?
A. No, only what has been here in evidence.
Q. You did not keep copies of your letters?
A. I did not of that letter or telegram, no,—whatever it was.
Q. What is you custom usually in that regard?
A. It is now, yes sir.

154 Q. You haven't any telegram that you sent or letter that you sent?
A. I naturally would not have a telegram that I sent?
Q. Have you any letter that you sent, or any letter that you received or telegram that you received, or any copy of either, with reference to these negotiations with Mr. Renfrow?
A. I haven't any in my possession.
Q. Why haven't you, where are they?
A. Well, I had one I think, at my house,—a telegram that I gave to my attorney.
Q. Now, you stated awhile ago that you had uninterrupted possession, during the summer of 1901, of that place?
A. Yes.
Q. How was that possession, was the same man there that was there before, doing the same things that he was doing before; he had never moved off the land had he?
A. Yes; he never left the land: he lived close to it, and when I bought the land I went down there and took possession of it,—walked over the land.
Q. You took possession by walking over it?
A. Yes sir, and I hired a surveyor to do some work.
Q. What surveyor went to work there?
A. Charlie Chamberlain.
Q. Did he take up the posts and stakes that were there?
A. Well, there wasn't any stakes that I saw.
Q. Well, you knew that Chamberlain was the same surveyor as these other people had down there, and he made you a price accordingly, didn't he?
Q. He made a plat of that place for you didn't he?
A. Yes sir; I filed it on the records down here immediately, as soon as he made it; I got him to rush the job on it; and when this litigation came up, I did not care about paying taxes on townsite property and I withdrew the plat.

155 Q. You have a note there for $5000 and interest?
A. Yes.
Q. And you have a check there also which you gave to Mr. Renfrow for $5000?
A. $5000.
Q. What was the full purchase price that you paid for that land?
A. Ten thousand dollars.
Q. And who paid to get this man off?

A. I did.
Q. Did Mr. Renfrow compensate you for any part of that?
A. No sir.
Q. Well, there was a mortgage on the land——
A. ——I forgot all about that until Mr. Everest told me; I th
I paid it off over there at his office, as soon as Mr. Renfrow sent
the check.
Q. He paid that back to you?
A. Yes sir.
Q. But he did not send you the Springstine business?
A. No sir.
Q. Well, you had an understanding about that mortgage w
you bought the land didn't you?
A. Yes sir.
Q. And he was to pay that off?
A. Yes.

Mr. HOWARD: I would like to offer this telegram in evidence
you have no objection. (marked "Ex. 8")
Mr. SHARTEL: Let's see it. (examining same)

Q. Mr. Edwards, you say that you were in a buggy when you
that conversation with Mr. Lee?
A. That is my recollection; I was coming down Robinson Str
Q. Now, when you say you were in a buggy, you refer to a dif
ent conversation between you and Mr. Land, do you not?
A. No, I think it was a conversation with Dan Wright and
Lee; I don't have any recollection of any other conversation w
Lee; I do remember that.

Mr. HOWARD: (reading "Ex. 8") "2 28 Joplin, Mo. R. J. E
wards, Oklahoma City, Okla. Property yours if Halsell failed
take deed from bank Wednesday, and same has been returned
Holt. See him. When shall I expect you? W. C. R
frow."
156 Mr. HOWARD: This one is (reading): "Oklahoma Ci
O. T., Feb 28, 1901. Hon. W. C. Renfrew, Care Keysto
Hotel, Joplin, Mo. Deed returned yesterday, be there Saturd
morning fully preferred (I suppose that means "prepared") to a
R. J. Edwards." ("Ex. 11")

Q. So it appears from this telegram that you knew very promp
when the deed was returned.
A. Well, I had wired to Mr. Renfrow and told him that I expect
to go to Chicago, and would stop off there if necessary, and he wir
me back that he would sell me the land—would accept my offer p
viding that Mr. Halsell had not taken the deed out of the ban
and the deal had not been closed up; and so I went over to the ba
to see if it had been taken out, and Mr. Holt told me that it had n
and I then wired and told Mr. Renfrow that Mr. Holt had inform
me that the deed had been returned, and that I would come prepar
to act.

Q. Well, why did you telegraph to him on the 27th? (referring to another telegram in his hands)
A. Why did I?
Q. Yes, you sent this telegram too, didn't you? (handing him)
A. I expect so.
Q. Well, as a matter of fact did you, or didn't you?
A. (examining same) I think I did.
Q. That is your testimony, that you did send that telegram, is it?
A. Yes sir. (marked "Ex. 9")
Q. Why did you find it necessary to send that telegram?
A. Well, I was going to Chicago;—I had been in a position to take that land from the time that I first made the offer, before I ever knew of these people, in it.
Q. Where did you get this copy?
A. I don't think I got it; I think Mr. Renfrow mailed it back to Mr. Wells or Mr. Shartel; I didn't know of it. I expect possibly that that is the original; I don't know anything about it—whether it is the original message that he received or not.

157 Mr. HOWARD: I want to introduce all these telegrams, if the court please, if you have no objection.
Mr. SHARTEL: Well, here is one (marked "Ex. 10") that is not signed by him; well, we have no objection to them. They can be admitted except that "Ex. 10."

Q. Well, is not that Governor Renfrow's signature?
A. Yes.
Q. Is that his signature? (referring to "Ex. 10")
A. Yes sir.

Mr. HOWARD: We offer that too.
Mr. SHARTEL: We object to it as incompetent.
The COURT: Let it be admitted under objection.
Defendants except to admission of Exhibit 10.
The two telegrams not heretofore read by Mr. Howard, and admitted under this ruling in evidence, are as follows:—

(Exhibit 9) "Received at 2 27 1901. Dated Oklahoma City, O. T. To Hon. W. C. Renfrow, Joplin, Mo. Will give five thousand cash same six months ten interest for Nichols tract. Will arrange for possession from lessees. Answer quick. R. J. Edwards."

(Exhibit 10) "Joplin 2/28. F. R. Holt, Western National Bank, Oklahoma City, Okla. Did Halsell take out deed or did you return by mail. W. C. Renfrow."

Q. What has been your relation with Mr. Renfrow during the last eight or ten years?
A. Friendly.
Q. He is a rather intimate friend of yours?
A. Yes sir.
Q. You have trusted each other implicitly, have you not?
A. Yes sir.

Q. And one would not in any way withhold any information from the other that was of value to him?

A. I don't know as I would; no, I don't think I would.

Q. And you do not think he would from you?

A. I don't think he would, no sir.

Q. He appointed you probate judge, did he not?

A. Yes sir.

Q. And he appointed you secretary of the — agency?

A. Yes.

158 Q. And your relations have been very close?

A. We have been friends.

Q. And he told you everything about this transaction with the people didn't he?

A. Why he told me that there were negotiations as I told you pending, but he always insisted that there was nothing closed.

Q. And it was understood before he went away, practically, that you were going to make a trade for this land, wasn't it?

A. No sir.

Q. No understanding at all?

A. There was no bargain at all between us.

Q. And did you go to the bank and ask why it was that the deed was not taken out?

A. No sir, I asked if the deed had been taken out.

Q. You asked them just that one thing, did you?

A. I asked them if it was returned.

Q. And you did not inquire why and did not know why?

A. I don't think I did.

Q. You did not make any effort to find out why it was not taken out?

A. I don't think I did, no sir.

Q. So at that time you did not know anything about why it was returned—whether it was returned for correction——

A. —That was all. Mr. Holt never told me anything.

Q. And you did not go to any of these plaintiffs—you were acquainted with all of them,—and enquire of them why they did not take it out?

A. It wasn't any of my business.

Q. You were acquainted with all of them: you did not know or care anything about it?

A. I know I did not do it: I know that.

12:10 Court adjourned until 1:30 p. m. of same day.

1:30 p. m. Same day. All parties being present, (including Gen. Renfrow) the trial was proceeded with as follows:

159 (Same witness recalled.)

(By HOWARD:)

Q. I will ask you Mr. Edwards, if the conversation that you refer to in the buggy, with Mr. Lee, was not on Robinson Street, south of Main Street,—that's where it was?

A. Yes sir, yes sir; that is what I suppose they referred to all along—in front of Owen & Welsh's.

Q. And if it was not after this suit was brought, and it was Mr. Land with Mr. Lee instead of Mr. Wright?

A. No sir, my recollection is that it was right there while Mr. Renfrow was in town—at that time.

Q. You do not remember the other conversation at all?

A. No sir.

W. C. RENFROW was the next witness called to the stand by the defense and gave the following testimony under oath:

(One of the defendants)

By Mr. SHARTEL:

Q. You may state your name?

A. W. C. Renfrow.

Q. You are one of the defendants in this case?

A. Yes sir, I believe so.

Q. Are you acquainted with the plaintiffs?

A. I believe so.

Q. Do you know George J. Shields of Oklahoma City?

A. Yes sir.

Q. Had you given him any permission or direction, verbal or otherwise, to sell the tract of land in controversy in this case, sometime in February, 1901?

A. I think possibly it was in February; I told Mr. Shields that if he could sell the property for $10,000 he could do so; I do not remember as to the time; I think it was in February, tho'.

Q. Was that by verbal conversation or was there any writing?

A. No writing, no sir.

Q. Did Mr. Shields at any time have any written document from you purporting or authorizing him to sell this land, except this telegram sent from Joplin on February 14th?

160 A. No sir, I think not; in fact I am quite confident that I never gave him written permission.

Q. How soon after the receipt of the telegram from Mr. Shields on that date, was it until you came to Oklahoma City?

A. Well, I don't remember, but I think I followed it up immediately; perhaps a day or two or two or three days; I could not say as to the exact time.

Q. Did you meet any of these parties when you came here?

A. I think I met all of them.

Q. Up until that time, until you arrived here, did you know who it was that was proposing to buy that land?

A. I rather think that Mr. Shields stated that it was Mr. Halsell.

Q. Well, previous to your arrival here?

A. Well, I am not certain as to that; I wont say as to that; well—yes,—yes, I knew who, from the fact that I made out the deed, and my wife was there and I had the deed signed up in order to deliver it; and I presume that I possibly included the names of all of the parties but I won't say as to that.

Q. How many of these parties did you meet when you came her
A. There are four of them I believe; I do not remember as just how many, but it is my impression now that there was fo of them that were interested in it.

Q. Did you meet any of them at Mr. Shields' office?

A. I won't say as to that, but possibly I did, as Mr. Shields sa me first about the matter; I don't remember.

Q. Up until the time that you left here, did you know of th parties having made a survey of that property or staked it out in lots?

A. No sir; I think Mr. Shields had it surveyed sometime befo that—a plat made, but not divided into town lots, that is, a pa of it.

Q. That is, he had the exterior boundaries surveyed?

A. Yes sir, in order to get the boundary lines.

Q. Did you know about these parties that were negotiatin to buy this land, having gone down there and surveyed it off int lots?

161 A. Well, I presume not; they had not purchased it; I don't suppose they did that.

Q. Calling your attention specifically to the conversation narrated by one of the witnesses in Mr. Shields' office; did you have any conversation with them or any of them there, in which you told them to go ahead and survey it into lots, that that would be all right?

A. No sir, I think not; not that I can remember of.

Q. Where and how did you first learn that Mr. Springstine was in possession of the property down there?

A. Why, I learned that from one of the gentlemen; I don't know which one of them, in the general conversation in your office I think; possibly it might have been a lawyer,—that there was some one in possession of the property; up to that time, why, I was not aware of it, or up to the time that I returned here for the purpose of negotiating this sale; I don't think I knew of it before that, because I had not owned the property but just a few weeks.

Q. What did you do upon learning that this party was in possession?

A. Why, I went down to see them and see by what authority they were there. I learned they were there through Mr. Cunningham's agent; he had leased them the property; in fact I believe, as I remember now, they had a contract from Mr. Blackwelder here, who had made them a lease from Mr. Cunningham, the former owner, acting as agent; he had sold it to Mr. Nichols and I had purchased it from Mr. Nichols immediately afterwards.

Q. Did you make any effort to get them out of there?

A. Well, I came up to your office at the time and consulted with you about getting possession, and I presume that it was about that time that I learned of them having this contract with Mr. Blackwelder.

Q. Blackwelder or Kramer?

A. Why, Kramer, I believe it was, instead of Blackwelder.

162 Q. You had considerable negotiations with these parties while you were here?

A. Yes sir.

Q. No writings were drawn up and signed by the parties, whatever, for the sale of the property?

A. No, I think not.

Q. The negotiations were all the way through verbal?

A. All verbal, yes sir.

Q. Now, Governor, go ahead and detail just exactly, as near as you can, what took place between you and the different parties about those negotiations, while you were here?

A. Well, as well as I remember,—I did not charge my memory with it—I came down here with the expectation of delivering the property for the amount agreed upon, and, while here, I presume in getting up the abstract—it was discovered that one lot— I believe it was 50 x 100 feet, and some odd feet perhaps—anyway it was a lot or a lot and a fraction that had been sold off at one time, and the abstractor had failed to note that, and it was discovered by some of these gentlemen after I came down, and in perfecting the abstract—well, I had a warranty deed from Nichols and he also had a warranty deed from Cunningham covering this property. And there was some misunderstanding as to the value of that particular lot, and these parties considered that there ought to be some deduction made as to the price of the property, from the fact that that lot had been sold out. I believe that I finally agreed that I would deduct either two or three hundred dollars—I don't remember which—for the price of that lot. Then it was a question of possession. They were willing—at least said they were willing—to take the property provided that I would give possession; I stated that I was willing to give such possession as I had and such possession as I became possessed of at the time of the purchase, and I agreed further that I would furnish an attorney to assist them—an attorney at my expense—to assist them in getting possession. And I consulted you
163 at the time arranged with you that if they wanted to take the property, and proceed under your directions, why they could do so. But they held out and insisted on immediate possession all the time, and from the fact that I could not give them immediate possession and did not do it, why, nothing was done. And I believed that evening, possibly about 7 or 8 o'clock, we had about concluded a satisfactory arrangement, as I supposed. And finally this matter came up again about possession; and I think Mr. Halsell—in fact I am pretty certain it was—said that unless he could get possession, he did not want anything to do with it. And I said, "Gentlemen, I am willing to deliver the deed here in the presence of my attorney, and I will give you such possession as he can obtain for you at as early a date as possible." But they were not disposed to take it that way; and I said to them that I was going to leave on the 7 or 8 o'clock train that evening, and that I would be at the Lee Hotel if they desired to take it up before my departure. That I would carry out my part of the agreement about closing the deal and they could get possession. Well, we met at the Lee again that evening, but nothing was done, so I left and returned home.

Q. Did you take the deed out of your pocket and offer it to them there in my office?

A. Yes sir.

Q. Who did you meet at the Hotel Lee?

A. Why, I think that I met all of them; there were possibly three or four of them, I would not say: Mr. Halsell was there I am sure, and Mr. Lee was there.

Q. Did you meet Mr. Everest there?

A. Mr. Everest was there, yes sir.

Q. Did you have any conversation with Mr. Everest about the subject of possession, there at the Lee?

A. Well, I don't remember——

Q. Did Mr. Everest say anything to you about damages?

A. Why, after we did not agree to anything, he says, "Well, of course we are ready to take the property, if you will turn it over to us and give us immediate possession," and I told him that was impossible, that I had gone just as far as I could and that I had
164 agreed all the way through to turn over the property, and that there could be no change on that. And he remarked that possibly it would be a measure of damages or matter of damages, if I didn't do it. And I said "Well, if you want to take the property and the deed here, this is the last time I think I shall present it to you; I am going home on that seven or eight o'clock train." And they failed to take the deed, and in fact never did make me any tender of any money, as far as that is concerned, at any time. So I left that night, and that was the last of it for a few days at least. So I went home then and considered the deal off, and so stated that afternoon, or that evening.

Q. Who did you make that statement to?

A. Why, it was in the presence of Mr. Everest and Mr. Lee and Mr. Halsell.

Q. What did you do after you returned home?

A. Well, in what way?

Q. Did you ever send another deed to them?

A. Why, after I returned home, perhaps the next day, I had a telegram from Judge Edwards, saying that he would take the property at the same price and get possession as best he could; yes, that he would get possession—he would be responsible for getting possession; and I wired him back that the deal was not closed——

Mr. HOWARD:—We object to that; the telegram will show that.

The COURT: Yes, the telegram will show for itself.

A. Why, I sent the deed back, I think the same day—in fact I am confident it was—to the Western National Bank or to Mr. Turner, with instructions that if these parties desired to take up that deed, and deposit to my credit $9,500—which, with the $10,000 [$500?] in the hands of Mr. Shields, would make $10,000—why, to turn it over to them, provided it was done in two days.

Mr. HOWARD: We object to that and move to strike it out; the letter will show for itself what instructions he sent

The COURT: Yes, if the letter is in existence.
165 Mr. SHARTEL: We have not got it.
The COURT: Well, you must show that it was lost.

Q. Well, the presentation of that deed there at the bank was under your authority?
A. Yes.
Q. You sent it there?
A. Oh, yes, yes.
Q. And the same deed was returned to you by the bank?
A. Yes sir, and I also notified Mr. Halsell at the time——
Mr. HOWARD:—wait a minute.
Mr. SHARTEL: Your letter is in evidence on that subject.
WITNESS: Yes, all right.

Cross-examination.

By Mr. HOWARD:

Q. You say that in making the abstract a discrepancy was discovered, is that right?
A. A discrepancy of what?
Q. In the description of the land?
A. No sir, it was found; no sir, it was found that the lot had been sold out.
Q. That is what I mean; who was making that abstract?
A. Mr. Owens and Welsh.
Q. Who was having it made?
A. I was.
Q. For what purpose were you having it made?
A. I was having it made to bring it up to date in order to close the deal.
Q. Why did you want an abstract?
A. Well, I was not particular about it; the other people were.
Q. You were doing it as a part of the arrangement with them, were you?
A. I was doing it because it is the custom, and a person would naturally expect an abstract.
Q. You understood it to be a proper part of this arrangement?
A. Certainly, yes sir.
Q. Did the abstract show anything else besides that discrepancy?

Mr. SHARTEL: Objected to as not the best evidence.
The COURT: Yes, the abstract I suppose would show for itself.

Q. Well, did you learn or did you know of any other defect in the land or its title?
A. No sir, I think not.
166 Q. Did you ever hear of a mortgage on it?
A. I don't remember.
Q. You do not remember about that?
A. No, I do not think there was a mortgage on it?
Q. You don't think there was a mortgage on it?
A. I don't think there was; I wont be positive.

Q. Have you got the deed by which you bought that land?
A. Yes sir.
Q. Got it with you?
A. No sir.
Q. Did you ever examine it?
A. The deed?
Q. To yourself?
A. Yes.
Q. Does it not state that there was a mortgage on it when you got it?
A. I really don't know sir, I don't remember.
Q. Well, you now know that there was a mortgage on it, don't you?
A. No sir, I don't remember that there was.
Q. Well, you never paid any mortgage off on it, did you?
A. No sir.
Q. So, if you did offer these people a deed and there was—
WITNESS: Yes, I remember about the mortgage now.
Q. Oh, you do remember that?
A. Yes, there was a mortgage there; an unsettled mortgage that had been paid, but unsettled.
Q. It had been paid?
A. I think it had.
Q. Don't you know as a matter of fact that Mr. Edwards paid that mortgage after you made a deed to him, and that you reimbursed him?
A. No sir.
Q. You don't say that that is not true, do you?
A. No sir, I do not; I don't remember.
Q. But you contend that this mortgage was paid, don't you?
A. No sir, I don't remember really that there was a mortgage on it.
Q. Now, you say that you had a deed made out before you came here?
A. Yes sir.
Q. And you think that deed was made to all these parties?
A. I am not certain as to that.
Q. Well, that described the land as you got it?
A. Yes.
167 Q. Then it did not describe it correctly, did it?
A. Well, with the exception of the lot that was sold out.
Q. And there was a defect in it, was there not?
A. Yes sir.
Q. And there was that defect, and a mortgage on it too?
A. I don't know about the mortgage; I didn't pay the mortgage.
Q. So you required these people to take that defective description and the mortgage on the premises, and pay you the money, and let you put it in your pocket and carry it off?
Q. Why certainly, if they were satisfied with the abstract.
Q. Do you tell the court that you expected these people to take your deed with the defective description, with some one on the

premises claiming the right of possession, and a mortgage unsatisfied against it, and give you the money and let you take it away; did you expect these people to do that?

A. I expected them to pay me for the deed, yes sir.

Q. To take that deed as it was?

A. Yes.

Q. And take the property as it was, and then what you took out on the lot?

A. Yes.

Q. Now then, the deed you sent to the bank corrected and excepted that 50 by 140 feet didn't it?

A. I won't say as to that.

Q. Well, if it did not, you still sent a defective deed to the bank, didn't you?

A. Well, if it covered the amount of the lot that was sold out.

Q. Now, listen; one of these things is true, is it not: If the deed which you sent to the bank was the same deed that you had here, and had not been corrected, then it did not describe the property correctly, did it?

A. No.

Q. Now, did you send the same deed to the bank or not?

A. Well, I am inclined to think that I did, because we had agreed upon $300 deduction as to that.

Q. Well, was it described correctly or not?

A. I think not.

Q. Well, did you draw a draft and attach it to the deed when you sent it to the bank?

A. No sir.

168 Q. Did you instruct the bank to collect $9,500?

A. Yes sir.

Q. So you expected these people to pay that extra two or three hundred dollars to you, to take a defective deed, with a mortgage against the premises and a man on there claiming possession: that is what you expected is it?

A. At that time, yes.

Q. So when you sent it to the bank, you had not the remotest idea that they would have taken it up?

A. Yes, I would not have sent it to the bank if I had thought that they would not possibly take it up.

Q. Provided that they took it with the mortgage, and gave you more money than was coming to you?

A. I don't remember as to the mortgage. The only question was as to the $300 when we were talking about it, we agreed upon that; but I don't think there was anything said about the mortgage.

Q. A mortgage to Mr. Everest, wasn't it; don't you remember that you knew about it and talked to him about it one day here in the office?

A. Well, I don't remember. The $300 was the only thing there was in question about the deed: There was only the question of possession that we failed to agree on.

Q. There was no question of a mortgage?
A. I don't remember of it.
Q. Is it not a fact that you expected these people to take that la
with the mortgage on it?
A. Well, I do not remember anything about the mortgage; th
has slipped my mind altogether; I might have known that t
mortgage was there, but what we agreed to do about it I could n
say, because it is a matter that I don't remember anything about;
has slipped my mind entirely.
169 Q. Now, Governor Renfrow, as a matter of fact, the de
was corrected or a new deed was made; will you tell the cou
which it was?
A. Well, if there was a correction, I do not remember as to th
Q. You do not remember, positively?
A. No, I do not.
Q. How many deeds did you execute?
A. I do not remember but one.
Q. Just one?
A. That is all.
Q. How many did you execute to Edwards?
A. One.
Q. How many altogether to this land?
A. Well, one to these people and one to Mr. Edwards, as I r
member.
Q. I will ask you if it was otherwise would you remember o
would you not?
A. Why I don't know why I would make so many deeds to di
pose of a piece of property; I did not charge my memory particu
larly with it; I would not likely remember; about that time I sup
pose I made thirty or forty deeds in this town.
Q. Oh, you do not undertake to say whether you remember o
not?
A. I undertake to say that at that time, I did not make mor
than two deeds, one to Mr. Edwards and one to these people.
Q. Are you satisfied that you made two deeds?
A. I mean, one to Mr. Edwards and one to this gentleman.
Q. Two separate distinct deeds?
A. Why I certainly must have.
Q. Now, you are about as certain about that, as you are with refer
ence you have testified to, are you not?
A. Well, no I am not.
Q. You are not certain about that, then?
A. Why, I certainly would not return them the same deed,—
return the deed to Mr. Edwards that I made to this gentleman.
Q. Now, Governor, you did do so and you remember the fact
don't you?
A. No sir, I do not.
Q. You do not remember of changing a deed for a consideration
of ten thousand dollars, scratching out the name of the party
170 that you had put in there and changing the dates on the deed
and restamping that deed, and you would say that you do
not remember it at all?

A. No, I do not; I say that positively.

Q. You do not say that you did not do that?

A. No sir, I do not remember anything about the execution of the deed.

Q. As a matter of fact, did you and your wife go before a notary public and make the deed to Mr. Edwards for these premises?

A. Why, we certainly did, yes sir.

Q. You remember that as a distinct fact, do you?

A. No, I do not.

Q. Then you do not really know that you did, do you?

A. Well, I am positive that I did, because I would have to do it.

Q. Well, now suppose this is the same deed that you made to Mr. Halsell, what then?

A. I don't see how it could be.

Q. Yes it is Governor.

Mr. SHARTEL: Hold on, we object to that.

A. Even if it was, it was by consent,——

Mr. SHARTEL: — wait a minute; we object to that form of testimony on the part of counsel.

The COURT: It is not proper to recite to him what the facts are; he has given his recollection.

Q. Well, you went down to that land while you were here you say?

A. Yes sir.

Q. You drove over it?

A. Yes sir.

Q. Did you notice anything out of the ordinary down there?

A. Why, I think I saw the largest onion I ever saw in my life.

Q. Well, did you notice anything else?

A. Well, nothing that I could call to mind except a corrall that had recently been put there.

Q. Did you notice anything else?

A. Oh, perhaps two or three trees that had been grubbed up there.

Q. Go on, did you notice anything else?

A. No sir, I don't know that I did.

171 Q. Did you notice that the ground had been staked off recently?

A. No sir.

Q. You didn't notice that. Did you notice that the fence had just been torn down there?

A. Well, that I would not have noticed, because this was the first time I had been there, to look over it.

Q. Any posts lying on the ground freshly taken out?

A. Well, I had never been on the ground before, altho' I had seen it many times in passing.

Q. Well, if the lots had been freshly staked out, the lots and blocks, you could not have helped noticing that, could you?

A. Why, if it was staked off like they usually do with white stakes, I presume I would have noticed it.

Q. Well, suppose they had been ordinary stakes, not white
A. No more than I would have supposed it was a gardener
ing off his ground.
Q. Suppose the wire was down and lying on the ground an
posts taken up freshly, do you think that you would have n
that?
A. Possibly I may have.
Q. Do you think that those things were done down there on
A. I don't know whether they were or not.
Q. And you offer no explanation of why it is that, altho'
must have been so many changes down there, you did not notic
changes that were the very changes that were elements in this
have you no explanation to offer for that?
A. Why, yes——

Mr. SHARTEL: Wait—we object to that as incompetent,
jection sustained. Plaintiffs except.

Q. Now, did you instruct the bank to collect $9,500?
A. Yes.
Q. As a matter of fact these people did not owe you that
money, did they?

Mr. SHARTEL: Objected to as calling for a conclusion.
Objection sustained. Plaintiffs except.

172 Q. That was not the amount which you were to re
was it?
A. Well, that was not as much as I was to receive, really
amount that they were to turn over to the bank was $9500,
the surrender of the deed.
Q. Well, you deducted $200 or agreed to, on that land that
conveyed away, didn't you?
A. Well, there was $500 that he put up.
Q. I understand that; I am talking about the $200.
A. I did not deduct anything as far as the $9500 was concer
the other was the money that they put up with Mr. Shields; that
a matter that I considered would be arranged when I came d
the only thing I would come in possession of would be the $
placed to my credit in the bank.
Q. And he other had already been paid Mr. Shields?
A. That I don't know, but I suppose it had been.
Q. What commission were you to pay Mr. Shields for selling
premises?

Mr. SHARTEL: Objected to as incompetent, irrelevant and im
terial.
Objection overruled.

A. Why, I don't know that I had any understanding about
Q. Do you know what the usual commission is?
A. Well, no sir. I know that Mr. Shields had about 15 o
thousand dollars of my property that he had been selling from
to time.

Q. I did not ask you about that: I asked you about this commission: did you have any understanding or expectation of what the commission was to be?

A. Well, I guess it would be something, not over 5%, probably a good deal less.

Q. And 5% would just make up that $500 would it not?

A. Yes sir.

Q. Did any other agent by the name of Shields have that land for sale?

A. No other agent by the name of Shields, no sir. That is the only Shields that I know.

173 Q. The only Shields you know in the business?

A. Yes sir.

Q. Several other persons had it for sale tho'?

A. No sir.

Q. Did anybody else have it for sale, or were others to sell it?

A. No sir.

Q. You had not made any arrangements with anybody else to sell it for you, or authorized them to sell it, besides Mr. Shields?

A. I don't think I did.

Q. Now you say that you took this deed out of your pocket and offered it to somebody?

A. I offered it to Mr. Everest I believe in Mr. Shartel's office.

Q. Was it in your pocket?

A. It was lying on the table there with the abstract and other papers.

Q. That was before any correction was made, wasn't it?

A. Well, if there was a correction made, yes sir.

Q. Did you pay any commission for the sale to Mr. Edwards to anyone?

A. No sir.

Redirect examination.

By Mr. SHARTEL:

Q. Let me call your attention to this deed; notice the names of the parties: what do you say about having used the same old deed that you made out to Mr. Halsell, by changing it so as to make it to Mr. Edwards? (referring to deed from Renfrow to Edwards)

A. Well, I say that I did that.

Q. Look at the acknowledgment.

A. Yes.

Q. And see how it is with reference to going before a notary public and acknowledging it?

A. Well, I see the acknowledgment was changed also by the notary himself.

Q. So then you must simply have used that same old deed and changed the names and re-dated it?

A. I suppose I did: I had forgotten it, but I see here that it has been changed.

Q. Now look at the alteration where the exception was made the Compton tract, at the last of the description.

174 A. Well, that is evidently the deed that I presented them, and the change was made from Mr. Halsell—it was made to him instead of all the parties,—the change was made from him to R. J. Edwards; and the notary changed his acknowledgment to that day, and it is reasonable to suppose that he took our acknowledgment or he would not have made the change of name and date in his own hand.

Q. Well, what do you say about reacknowledging the deed as fact?

A. Well, in looking over the deed I know now that this was the deed that I presented to them, because Mr. Halsell's name is in there, and the same notary reacknowledged it that acknowledged it in the beginning, and he changed the date and took the acknowledgment over, I presume now, to save making up a new deed.

Mr. SHARTEL: That is all.

Recross-examination.

By Mr. HOWARD:

Q. The description was also changed in the mean time so as to make it correct and except that small tract, wasn't it?

A. Well, I presume that there was no other change made in it.

Q. Well, just look at that deed, Governor, and see if you discover that there was not another change, see if it does not except that small tract in that deed?

A. Well, that part of it looks like it was all made at the same time.

Q. Well, you have stated that you had already made your first deed before you came down here, have you not?

A. That was my impression.

Q. And that after you got here you found that there was a mistake in the description; you stated that didn't you?

A. Yes sir.

Q. And that mistake is corrected in that deed there; I wish you would explain that to the court.

A. No, I think not. It rather occurs to the that the gentlemen in Mr. Everest's—either Mr. Everest or his party;—

175 I won't pretend to say as to how the deed was made, because I have forgotten about it but I should judge that this is the same deed without any correction on it, because it must be the same, the typewriting and everything.

Q. Then you knew that that land was to be excepted before you came here at all?

A. Oh, no, no sir.

Q. Then you did know that that deed had to be corrected?

A. Well, it must have been, but it occurs to me now that there was to be another deed made;—but I could not say; I don't know how it occurred; I guess I have made a hundred deeds or more since then.

Q. You have forgotten all about that?
A. Yes, I had. I have forgotten all about that.

Whereupon Defendants rest in Chief.

Rebuttal.

Oscar G. Lee was thereupon called to the witness stand in rebuttal by the plaintiffs, and gave the following testimony under oath:

By Mr. Howard:

Q. Mr. Lee, you heard the testimony of Mr. Edwards about the conversation that he had with you at the time that he was in the buggy, didn't you?
A. Yes sir.
Q. Was that the conversation to which you referred this morning?
A. No sir.
Q. That was the last time, the last conversation—when Mr. Edwards was in the buggy, was it?
A. The last time.
Q. When was this that he referred to with reference to the time the suit was brought?
A. Afterwards.
Q. After the suit was brought?
A. Yes sir.
176 Q. Was there anything said in that conversation about Mr. Edwards having notice of this trade of yours?
A. Yes sir.
Q. What was it?
A. Why, he wanted to know if he could not get the land on the market some way before the Main Street addition was sold, and I told him that if we had the land or had the deed to it, we could, and I remarked to him that he had had plenty of notice, and that we would never give him a dollar.
Q. What did he say to that?
A. Why he just drove away.

Mr. Shartel: We move to strike out that last conversation as incompetent, irrelevant and immaterial.
The Court: Well, let it stay in the record.

L. L. Land is thereupon recalled in rebuttal by the plaintiffs, and testified as follows:—

By Mr. Howard:

Q. You were present at the last conversation that Mr. Lee has mentioned were you not?
A. After the suit was brought?
Q. Yes.
A. Yes sir.

Plaintiffs Rest.
Defendants Rest.
3 p. m. Case Closed.
Court adjourns.

177 *Warranty Deed (From Renfrow to Edwards).*

Know all men by these presents, That W. C. Renfrow and Jennie B. Renfrow, husband and wife, of Oklahoma County, Territory of Oklahoma, parties of the first part, in consideration of the sum of Ten Thousand and no 100 ($10,000) Dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto R. J. Edwards, of Oklahoma County, Territory of Oklahoma, party of the second part, the following described real property and premises, situate in Oklahoma County, Territory of Oklahoma, to wit:

A portion of the north half of the northwest quarter (otherwise designated as lots 3 and 4) of Section four, in Township eleven (11) North of Range Three (3) West Indian Meridian, described as follows; to wit: Beginning at a point where the centre of the alley between Noble and Chickasaw Streets in South Oklahoma Addition, Oklahoma City, intersect the east line of said land, said point being nine hundred and ten (910) — south of the northeast corner of said land, thence due west on a line parallel with the north line of said land to the west line thereof; thence north along said west line five hundred and eighteen (518) feet to the southwest corner of the land deeded to Frances Kelsch; thence due east on a line parallel with the north line of said land twelve hundred twenty-two and forty-three one-hundredths (1222.43) feet, to the southeast corner of the land deeded to Frances Kelsch; thence due north on a line parallel with the west line of said land, three hundred and ninety-two (392) feet to the north line of said land; thence east along the north line of said land five hundred and eighty (580) feet due west of the northeast corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence on a line parallel with the north line of said land one hundred and eighty (180) feet; thence south on a line parallel with the east line of said land three hundred and eighty (380) feet to the south-
178 west corner of the Washington Public School land on said land; thence due east to the east line of said land; thence south along said east line to the point or place of beginning. Save and except a strip of land two hundred (200) feet wide and three hundred (300) feet long and lying immediately west and adjoining a block of ground owned by Mrs. Meshacle Couch. Also excepting a certain piece of ground 50 by 100 feet deeded to C. A. Compton by Bennie L. Cunningham on August 29th, 1898, and recorded in Record No. 7, Quit-claim deeds, page 154; also excepting the right of way of the St. Louis & San Francisco Railroad Company; together with all improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature,

except for the taxes for the year 1901, which the grantee hereby assumes and agrees to pay.

Signed and delivered this second day of March, 1901.

W. C. RENFROW.
JENNIE B. RENFROW.

In the presence of

(\$10 Rev. Stamps)

Acknowledgment.

STATE OF MISSOURI, *Jasper County, ss:*

Before me, Jno. C. Keenan, a notary public in and for said County and State, on this 2nd day of March, 1901, personally appeared W. C. Renfrow and his wife, Jennie B. Renfrow, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

[SEAL.] JNO. C. KEENAN,
Notary Public.

My Commission expires Oct. 31, 1901.

Endorsed: Warranty Deed. W. C. Renfrow and wife,
179 Jennie B. to R. J. Edwards.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 8 day of March 1901, at 4.50 o'clock p. m., and recorded in Book 20 of Deed Record, on page 157.

C. J. BOWMAN,
Register of Deeds.

GEO. J. SHIELDS & SON,

Real Estate, 9 Robinson Street, Oklahoma City, O. T.

TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

I, Frank W. Inglis, official stenographer of the district courts of the Third Judicial District of the Territory of Oklahoma, do hereby certify that the above and foregoing is a true, correct and complete transcript of all of the evidence, oral and documentary, the objections of counsel, the rulings of court, the exceptions to such rulings, taken by me in shorthand on the trial of the cause of Oscar D. Halsell *et al. v.* W. C. Renfrow *et al.*, at Oklahoma City, on May 27th, 1903, and subsequent days, at the April, 1903, term of said court.

FRANK W. INGLIS,
Official Sten. 3rd Jud. Dist.

180 In the District Court in and for Oklahoma County, Oklahoma Territory.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Journal Entry.

This cause coming on for final hearing on the 14th day of November, 1903, this being one of the regular days of the regular term of court held in the month of November, 1903, and the court having heard the evidence of the witneses, and the arguments of counsel, and being fully advised in the premises, finds the issues in said cause in favor of the defendants, and orders the costs in such cause taxed to the plaintiffs, to which finding and judgment the plaintiffs duly and legally except, and the plaintiff is allowed ninety days in which to prepare and serve a case made, ten days thereafter allowed defendants to suggest amendments thereto the same to be signed and settled on five days' notice.

C. F. IRWIN, *Judge.*

Endorsed: #2856—Oscar D. Halsell *et al. vs.* William C. Renfrow *et al.*—Journal Entry—Filed in District Court Oklahoma County, O. T. Dec. 21, 1903, B. D. Shear, Clerk, By Will H. Clark, Deputy.

181 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants.

Journal Entry.

It is hereby ordered by the Court that to stay execution of the judgment in said cause the plaintiffs therein be required to execute with sufficient surety, to be approved by the clerk of said court, a bond in the penal sum of One Thousand Dollars, conditioned for the payment of all costs and damages, and that they will bide the final judgment and decision in said cause, in the Supreme Court of said Territory, as well as in said District Court; that this order is made as of the date of November 14, 1903, and shall be entered as of that date, and shall be effective from that time; that said court should have made this order at that time and of that date, and as a part of the original judgment and journal entry herein, and by oversight failed to fix the amount of said bond.

Dated this fourteenth day of November, 1903.

C. F. IRWIN.

Presiding Judge of the District Court.

Endorsed: #2856. Halsell *et al. vs.* Renfrow *et al.*—Order fixing stay bond. Filed in District Court Oklahoma County, O. T. Jan. 14, 1904, B. D. Shear, By Will H. Clark, Deputy.

182 In the District Court of the Third Judicial District Within and for Oklahoma County, Territory of Oklahoma.

#2856.

OSCAR D. HALSELL ET AL., Plaintiffs,
vs.
WILLIAM C. RENFROW ET AL., Defendants.

Motion for a New Trial.

Come now the above named plaintiffs by their attorneys, H. H. Howard and J. H. Everest, and hereby move the court for a new trial in the above entitled action, and assign as grounds and reasons for said motion the following errors in said proceedings and decision:

Assignments of Errors.

1st. The court erred in rendering judgment in favor of the defendants and against the plaintiffs for the reason that said decision is contrary to law.

2nd. The court erred in rendering decision and judgment in favor of the defendants and against the plaintiffs for the reason that said judgment and decision is not sustained by sufficient evidence.

3rd. The court erred in finding that the contract proven in evidence was not sufficient under the Statute of Frauds.

4th. The court erred in finding that the acts, conduct and transactions of the parties were not sufficient to take said transaction out of the Statute of Frauds.

5th. The court erred in holding and finding that the defendants were not estopped by their acts under the Statute, from claiming the protection of the Statute of Frauds.

6th. The court erred in not rendering judgment and decision for the plaintiffs under the evidence and the admitted facts.

7th. Errors of law occurring at the trial excepted to by the plaintiffs at the time.

183 Wherefore, plaintiffs pray for a new trial in said action.

H. H. HOWARD AND
J. H. EVEREST,
Att'ys Plaintiffs.

Endorsed: #2856. In Dist. Court Oklahoma County, O. T. Oscar D. Halsell *et al.*, Plaintiffs, *vs.* Wm. C. Renfrow *et al.*, defts. Motion for New Trial. Filed In District Court Oklahoma County, O. T. Nov. 14, 1903, B. D. Shear, Clerk, By Will H. Clark, Deputy

Which said motion for a new trial so filed by the plaintiffs ther after on to wit, the same day, upon the consideration of the cou was overruled, to which at the time plaintiffs duly excepted.

184 In the District Court of the County of Oklahoma and Ter tory of Oklahoma.

OSCAR D. HALSELL ET AL., Plaintiffs,
vs.
WILLIAM C. RENFROW ET AL., Defendants.

The said plaintiffs will take notice that the defendant, R. J Edwards, has filed in said court and cause a motion, a copy of whic is hereto attached and that the same will be heard before the Honor able C. F. Irwin, as Judge of said Court on July 14th, 1903, at 9 o'clock a. m. or as soon thereafter as the same can be heard.

SHARTEL, KEATON & WELLS,
Attorneys for Defendant R. J. Edwards.

We hereby acknowledge service of the above motion and notic this 17 day of June, 1903.

HOWARD & AMES,
Attorneys for Plaintiffs.

185

Motion.

In the District Court of the County of Oklahoma and Territory of Oklahoma.

OSCAR D. HALSELL ET AL., Plaintiffs,
vs.
WILLIAM C. RENFROW ET AL., Defendants.

Comes now the defendant, R. J. Edwards, and moves the court to open up the evidence herein and permit him to introduce as further evidence the testimony of George J. Shields. As reason for the granting of said motion this applicant alleges that he has since the trial of said cause been informed, and believes such information to be true, that if the testimony of said Shields was taken by deposition he would testify that the $500.00 received by him through payment of the check introduced in evidence in this case given by L. L. Land to said Shields was offered to be returned by the said Shields to the plaintiffs in this case but that they refused to receive the same. That the oral agreement or understanding had between the said plaintiffs and the said George J. Shields for the sale of the land in controversy in this case was not for the sum of $10,000 according to the terms on which said property was listed with the said Shields, but that said Shields agreed with plaintiffs that the purchase price for said land should be the sum of $9700.00 and that the said Shields had an understanding with said plaintiffs that he was to represent

to the defendant, William C. Renfrow, that said sale was made in consideration of the sum of $10,000, but that in truth and fact said plaintiffs were only to pay said Shields the sum of $9700, the balance of $300.00 to be accounted for by Shields to said Renfrow as a part of his commission on the sale. That this applicant had no knowledge of any of the facts above set forth until after the evidence in said case was introduced.

186 Applicant attaches hereto marked Exhibits "A" and "B," copies of two letters now in his possession from George J. Shields to William C. Renfrow as evidence that this application is made in good faith and that the testimony of said George J. Shields, if taken, would be as represented.

That such testimony in certain contingencies might be material to the issues herein.

SHARTEL, KEATON & WELLS,
Attorneys for Defendant R. J. Edwards.

187 TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

R. J. Edwards being duly sworn on his oath says, that he has carefully read the attached application to reopen the evidence, in the case of O. D. Halsell *et al. vs.* W. C. Renfrow *et al.* and be allowed to introduce further evidence, and that the statements therein contained are true.

R. J. EDWARDS.

Subscribed and sworn to before me this 15th day of June, A. D, 1903.

[SEAL.] NEVA HAINES,
Notary Public.

My commission expires March 28th, 1904.

188 EXHIBIT "A."

Notary Public.

References: State National Bank, Bank of Commerce, Western National Bank.

Geo. J. Shields, Real Estate, Loans, and Insurance.

Investments made and Taxes paid for non-residents.
Correspondence Solicited.
109 Robinson St. 2 Doors North State Nat'l Bank. Lock Box 388.

OKLAHOMA CITY, OKLA., *May* 30", 1901.

Hon. Wm. C. Renfrow, Joplin, Mo.:

Your letter containing abstract received. Western National is also in receipt of papers. I have negotiated a loan for Kirkpatrick with Mr. Gum of Perry. I wired him he come down and surveyed the situation. I sent him last evening abstract and all necessary papers.

Just received a letter from him stating he would be here the lat
part of this week or beginning of next. Will wind matters up
soon as possible. How about the forty acres Edwards informed
paid five thousand cash and note for same amount which is same
the other deal. I agreed with the first parties to give them three hu
dred dollars and accept of two hundred for my part, as Owen a
Welsh had made the same offer. You said it made no differen
which way the deal went. I would get the two hundred. Ho
ever, let that be as it may. I have no quarrel with you and whatev
you consider just and right is all right with me and I will be pe
fectly satisfied had a fine rain this morning everything looks pro
perous. With regards. I remain, Very respectfully,

(Signed) GEO. J. SHIELDS.

189 EXHIBIT "B."

J. W. Stockard. L. D. Danenber.

Grand Central, European and American Plan.

ROSWELL, NEW MEXICO, *June 9th*, 1903.

Hon. Wm. C. Renfrow, Joplin, Mo.

DEAR SIR: Your letter received and contents carefully note
1st, the $200.00 paid me by you was in full for services rendered i
sale of the 40 acre tract of land. No it was not taken out of th
$500.00 deposited with me as forfeit to buy place. You paid it o
of your individual funds. No you refused to accept the $500.0
The parties buying the land also refused it.

With regards I remain,

Very respectfully, GEO. J. SHIELDS.

Endorsed: #2856. In the District Court of Okla. Co. Oscar
Halsell *et al.*, Plaintiffs, *vs.* W. C. Renfrow *et al.*, defendants. M
tion to Submit additional testimony. Filed June 17, 1903, B.
Shear, Clerk, Shartel, Keaton & Wells, Attorneys for ——.

190 The above and foregoing as the case-made in said cause i
hereby tendered to and served upon the defendants in erro
therein, and which said case-made contains a true and correct stat
ment of all the pleadings, motions, orders, rulings, findings and pr
ceedings, and judgments rendered in said cause, and all of the ev
dence introduced therein.

J. H. EVEREST AND
H. H. HOWARD,
Attorneys for Plaintiffs in Error.

Due service of the above and foregoing case-made is hereby ac
knowledged, this 11th day of January, 1904, and service of sum
mons in error in said cause is hereby expressly waived.

SHARTEL, KEATON & WELLS,
Attorneys for Defendants in Error.

Filed Feb. 5, 1904.
BENJ. F. HEGLER, *Clerk Supreme Court.*
By JESSIE PARDOE, *Deputy.*

The defendants in error named therein have no amendments to suggest, and it is hereby agreed that the same may be settled without notice to us.

J. H. EVEREST,
H. H. HOWARD,
Attorneys for Plaintiffs in Error.
SHARTEL, KEATON & WELLS,
Attorneys for Defendants in Error.

Filed Feb. 5, 1904.
BENJ. F. HEGLER, *Clerk Supreme Court.*
By JESSIE PARDOE, *Deputy.*

191 *Certificate of Judge.*

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This is to certify that the above and foregoing case-made was duly served within the time allowed by law and by the court, and that all suggestions and amendments thereto have been considered and settled by the court, and that the same is submitted to me for settlement, signing and certifying, and that the same as above set forth is a true and correct statement of all the pleadings, motions, orders, evidence, exceptions, findings, proceedings and judgments had or made in said cause, and contains all the evidence therein, and I hereby settle, allow, certify and sign the same as true and correct, and hereby order that the clerk of the District Court of said Territory, within and for said County, attest the same with his name and the seal of said court, and file the same of record as provided by law

Witness my hand this 21st day of January, 1904.

C. F. IRWIN, *Judge.*

Attest:
B. D. SHEAR,
[SEAL.] *Clerk of the District Court.*

Filed Feb. 5, 1904, Benj. F. Hegler, Clerk Supreme Court. By Jessie Pardoe, Deputy.

Endorsed: Filed in District Court Oklahoma County, O. T., January 22, 1904—B. D. Shear, Clerk.

192 Said case-made is endorsed: No. 1465—In the Supreme Court—Oscar D. Halsell *et al., vs.* William C. Renfrow *et al.*—Petition in error and Case-Made—Filed Feb. 5, 1904—Benj. F. Hegler, Clerk Supreme Court, By Jessie Pardoe, Deputy.—H. H. Howard, J. H. Everest, for Plaintiffs in error.

193 And afterward at the June, 1904, Term of said Supre Court, on the Tenth day of June, 1904, the following p ceeding was had in said cause, to wit:

#1465.

O. D. HALSELL ET AL., Plaintiffs in Error,
vs.
WILLIAM C. RENFROW ET AL., Defendants in Error.

Comes now Frank Wells, of counsel for defendant- in error, a makes oral argument herein, and cause is submitted on record, bri and oral argument.

194 And afterward at the June Term, 1904, of said Supre Court, on the Third day of September, 1904, the followi proceeding was had in said cause, to wit:

#1465.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

And now this cause comes on for final decision and determinatio by the Court upon the record, briefs and oral argument submitte herein.

And the Court having duly considered the same, and being full advised in the premises, finds: That the judgment of the lower cou in this cause should be affirmed, at the cost of plaintiffs in error.

It is therefore ordered and adjudged by the Court: That the judg ment of the lower court herein be and the same is hereby affirmed, a the cost of plaintiffs in error.

Opinion by Burford, C. J. All the Justices concurring except Irwin J., who tried the cause below, not sitting, and Burwell, J., wh did not participate.

Which opinion reads in words and figures as follows, to wit:

195

No. 1465.

In the Supreme Court of the Territory of Oklahoma, June Term, 1904.

Filed September 3, 1904.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT, and JEAN H. EVEREST, Plaintiffs in Error,

vs.

WILLIAM C. RENFROW and R. J. EDWARDS, Defendants in Error.

Syllabus.

1. An agreement for the sale of real estate is invalid unless the same or some note or memorandum thereof be in writing and subscribed by the party to be charged or his agent, and such agreement, if made by an agent, is invalid unless the authority of the agent be in writing subscribed by the party sought to be charged.
2. A complete contract binding under the statute of frauds may be gathered from letters, telegrams and writings between the parties relating to the subject-matter, and so connected with each other that they may be said to fairly constitute one paper relating to the contract.
3. A memorandum to be sufficient under the statute of frauds must be complete in itself and leave nothing to rest in parol.
4. A contract for the sale of lands which a court of equity will enforce specific performance of, must be certain in its terms and that certainty required has reference to the parties contracting, the terms of the sale and the description of the property, and wherever the property to be conveyed cannot be identified as the property referred to in the contract, specific performance will be denied.
5. Where a sufficient description is given in the contract, parol evidence may be resorted to in order to fit the description to the thing, but where an insufficient description is given, or where there is no description, such evidence is inadmissible. A court will never receive parol evidence both to describe the land and to apply the description.
6. A written contract cannot be altered except by a contract in writing or by an executed oral agreement.
7. A parol agreement for the sale of real estate may be specifically enforced where there has been such part performance of the
196 contract as would make it impracticable to place the parties in their original positions, and thus make it a fraud upon one of the parties not to enforce the agreement.
8. The payment of the purchase money is not alone such part performance of an agreement to sell real estate as will authorize a court to enforce its specific performance. But part pay-

ment and taking possession in good faith, or taking possess
with the knowledge of the vendor and making valuable
provements, constitute such part performance as will o
narily warrant a court in decreeing specific performance
the contract.

9. The acceptance of benefits under a contract which will imp
consent to all the obligations arising from such acceptan
must be a voluntary acceptance with a knowledge of the f
affecting such acceptance, and payment of money to an ag
will not constitute such voluntary acceptance unless it
shown that he was authorized to accept such payment.

10. A real estate broker who has lands listed with him for sale, is o
authorized to find a purchaser and submit a proposition,
he has no authority to make an agreement of sale un
specifically authorized in writing by the owner.

11. A real estate broker who has lands placed with him for s
has no authority to collect or receive money on the purch
price of such lands, and if a purchaser without demandi
the written authority of the agent, pays the agent money
be applied on the purchase price of land, he makes the bro
his own agent for the purpose of receiving the money
the owner, and makes such payment at his own risk.

Error from the District Court of Oklahoma County.

Clinton F. Irwin, Trial Judge.

Affirmed.

J. H. Everest and H. H. Howard, for Plaintiffs in error.
Shartel, Keaton & Wells, for Defendants in error.

Statement of Facts.

This is an action for specific performance of an alleged agreeme
to convey real estate, brought in the district court of Oklahom
County, Oklahoma, by Oscar D. Halsell, Oscar G. Lee, Leonidas
Land, Daniel P. Wright and Jean H. Everest, plaintiffs, again
William C. Renfrow and R. J. Edwards, defendants. The materi
averments of the petition are substantially as follows: That on a
prior to February 14, 1901, W. C. Renfrow the defendan
197 was the owner of a tract of land in Oklahoma County, Okl
homa, described as follows: A part of the north half of t
northwest quarter (¼) of section four (4) in township eleven (11
North Range three (3) west of the Indian Meridian, more partic
larly described as follows: Beginning at a point where the middl
alley between Noble and Chickasaw streets in South Oklahoma add
tion to Oklahoma City intersects the east line of said quarter sectio
running thence west on a line parallel with the north line of sa
quarter section to the west line thereof; thence north along sa
west line five hundred and eighteen (518) feet to the southwe

corner of the parcel deeded to Francis Ketch; thence north on a line parallel with said north line twelve hundred twenty-two and forty-three hundredths (1222.43) feet to the southeast corner of the land deeded to Francis Ketch; thence north on a line parallel with the west line of said land three hundred and ninety-two (392) feet to the north line thereof; thence east along the north line of said land to a point five hundred and eighty (580) feet west to the northeast corner of said land; thence south on a line parallel with the east line of said land three hundred (300) feet; thence east on a line parallel with the north line of said land one hundred and eighty (180) feet, thence south on a line parallel with the east line of said land three hundred and eighty (380) feet to the southwest corner of the Washington public school grounds on said land; thence east to the east line of said land; thence along said east line to the place of beginning. That George J. Shields was a real estate dealer at Oklahoma City and was duly authorized by Renfrow to sell said lands to such purchaser as he might be able to obtain for the price of ten thousand dollars. That these plaintiffs offered Shields ten thousand dollars for said land. That shields accepted said offer for Renfrow and plaintiffs paid him on the purchase price thereof
198 the sum of $500.00 which Shields received and accepted as the agent of Renfrow. That Shields the same day wired Renfrow at Joplin, Missouri, that he had sold the land for five (?) thousand dollars. That in answer to said telegram Renfrow by wire ratified and confirmed said sale. That in pursuance of said agreement Renfrow made and subscribed and acknowledged a deed, describing said land, reciting a consideration of ten thousand dollars, and brought said deed to Oklahoma City for the purpose of consummating said sale. That at the time of making said agreement of sale, the parties in good faith believed that Renfrow was the owner of forty acres of land as described, but on investigation it was discovered that Renfrow's vendor had conveyed a small portion of said land to another person, and it was mutually agreed to deduct $200 from the purchase price as consideration for said deduction in land, and Renfrow agreed to execute another deed, correctly describing said land and omitting said portion previously sold. That Renfrow prepared a new deed, conforming to the corrected description, and after signing and acknowledging same, deposited the same with the Western National Bank with directions to deliver the same to plaintiffs on the payment of the balance of the purchase money. That plaintiffs thereafter tendered to the bank the balance due as purchase price of said land and demanded the deed, but that the bank refused to deliver said deed for the reason that Renfrow had directed them to demand a greater sum than was due.

That R. J. Edwards, with full notice and knowledge of plaintiffs' rights and their claim to said land, entered into a fraudulent arrangement by which Renfrow conveyed said land to him.

That the defendants refuse to convey said land to plaintiffs, although they are ready and willing and able to pay the whole of the purchase price of said land, and now offer to do so.

199 That after the purchase of said land and with the knowledge and consent of said Renfrow and before the conveyance

to Edwards, the plaintiffs went into actual possession of said lan
and thereupon discovered that one Springmeyer was in actual p
session of a portion of said land under a lease which would not e
pire for many months, and said Renfrow refused and neglected
surrender to them full possession, but consented to such occupan
as they might enjoy in connection with said tenant. That th
with the consent of Renfrow went upon said land and tore dow
fences and destroyed improvements found on the land.

That the five hundred dollars paid to Shields on said purcha
price is retained by Renfrow.

Wherefore plaintiffs pray for a decree of specific performanc
that the deed to Edwards be cancelled, and that if there are any i
cumbrances on the land that proper deductions be made in the pu
chase price and judgment rendered accordingly.

This suit was commenced March 8, 1901.

The defendant Edwards answered first by general denial, and a
mitted that he had purchased the land in question from Renfro
and paid him therefor the sum of ten thousand dollars. That h
went into possession on the 9th day of March, 1901, and had ne
in undisputed and sole possession ever since said date, and unt
January, 1902, when the plaintiffs undertook to unlawfully an
wrongfully take possession of said land and began the erection of
building thereon.

The defendant Renfrow for his separate answer denied that h
had ever made a contract of sale of said land to plaintiffs; tha
Shields was authorized to sell said land or make any contract o
sale, and admitted that he had been the owner of said land, an
that on March 2, 1901, he sold and conveyed said land by
200 warranty deed to his codefendant, R. J. Edwards.

The answers of both Edwards and Renfrow were verifie
by affidavit. The plaintiffs replied by general denial.

The cause was tried to the court and finding and judgment fo
the defendants.

Upon the trial the evidence introduced fairly and reasonably sup
ports these conclusions: That about the first of February, 1901, th
defendant, W. C. Renfrow, was the owner of the real estate in con
troversy; that he had recently purchased it and placed it in the
hands of Shields, a real estate agent at Oklahoma City for sale
The authority of Shields as agent was not in writing, and he had
no authority to make a contract of sale. The price placed upon the
property by Renfrow was $10,000. Renfrow lived at Joplin, Mis
souri, and the land was in Oklahoma City, where the plaintiffs al
resided. Shields offered the property to the plaintiffs and they
agreed to take it at the price of ten thousand dollars, and they paid
Shields five hundred dollars upon the agreement to purchase, which
sum he still retains. Shields notified Renfrow by wire as follows
"Oklahoma City, O. T. Feb. 14, 1901. W. C. Renfrow, Joplin, Mo
Have sold the forty acres ten thousand cash, five hundred forfeit
Answer. George J. Shields." To this Renfrow sent the following
answer: "Joplin, Mo., February 14, 1901. George J. Shields, Ok-
lahoma City, O. T. I confirm sale by you ten thou-and cash, five

hundred forfeit. W. C. Renfrow." Following this telegram, Mr. Renfrow went to Oklahoma City and there met the plaintiffs, and all the subsequent negotiations were carried on personally and orally. It was discovered that a prior owner of the tract in controversy had conveyed a lot 50 by 100 feet to C. A. Compton, and also made a lease upon the entire tract to one Springstine, who was in actual possession and refused to surrender. It developed
201 that Renfrow could not deliver possession to the purchasers, and considerable time was spent in trying to agree upon terms for final completion of the sale. Renfrow proposed to deliver the plaintiffs the deed for all except the Compton lot, for which he would make a deduction of two hundred dollars in the purchase price, and to give such possession as he had, and to give full possession as soon as he could obtain it, or that he would pay the expense of an action to procure possession from Springstine, and employed an attorney for that purpose. The plaintiffs agreed to the $200 deduction for the Compton lot, but refused to take the deed or pay the purchase money unless Renfrow would give possession at once and get Springstine to vacate within thirty days, as they desired to plat the land and put it on sale at once. Before Renfrow arrived in Oklahoma City some of the plaintiffs had gone on the land with a surveyor and were staking it off into lots and blocks and were tearing down fencing and removing posts. This work was stopped by the tenant Springstine, and the plaintiffs made no further efforts to assert possession until the expiration of the lease, and long after this suit had been brought. Renfrow then went back to Joplin, and on February 25, sent to the Western National Bank at Oklahoma City a deed properly executed, conveying said land to Oscar D. Halsell, except the Compton lot and the Frisco railroad right of way, which were excepted, and directed the bank to deliver the deed on payment of $9500.00. On the same day Renfrow wrote Mr. Halsell as follows:

"JOPLIN, MO., *Feb.* 25, 1901.

Mr. Oscar D. Halsell, Oklahoma City, O. T.

MY DEAR SIR:—I have this day mailed to the Western National Bank the deed to the Cunningham tract, and have instructed them to turn same over to you upon your depositing $9500 to my
202 credit, and $500 to the credit of Geo. J. Shields, and I shall expect this to be done between banking hours on Wednesday, the 27th inst., as Mr. Everest notified me on Saturday night that he would expect me to perfect title within thirty days, and was kind enough to extend me that length of time (only I presume).

I have concluded that I will bring this matter to a close at once and shall give you the opportunity of taking up the deed on Wednesday, or will consider the proposition at an end.

Most respectfully, W. C. RENFROW.

P. S.—I write Mr. Shields to-day and instruct him fully in the matter."

Mr. Halsell also made the following tender in writing to the bank:

"OKLAHOMA CITY, OKLA., 2-27-1901.

I hereby tender F. R. Holt cash $9,300.00 together with $500.00 now in the hands of Geo. J. Shields, Agt of W. C. Renfro, as payment in full according to agreement with said Renfro for tract of land known as Cunningham tract of land, and possession thereof, deed of which is now in hands of F. R. Holt, cashier.

O. D. HALSELL.

Witness,
L. L. LAND.
O. G. LEE.

The above $9,300.00 tendered and refused by F. R. Holt, Cashier, 2-27-1901."

On the same day Mr. Halsell wrote Mr. Renfrow as follows:

OKLAHOMA CITY, O. T., 2-27-1901.

Mr. W. C. Renfrow, Joplin, Mo.

DEAR SIR:—I am in receipt of your letter of Feb. 25th, in which you call my attention to the fact that you have sent deed for Cunningham tract of land to Western National Bank, and that upon payment of $9500.00 placed to your credit and $500.00 placed to the credit of Geo. J. Shields, same will be delivered to me. Will say, that I to-day tendered to Mr. F. R. Holt, Cashier of the Western National Bank, $9300 in *cash*, together with $500.00 held by Geo. J. Shields, your agent, and the $200.00 you agreed to allow for land sold off of said tract, would make $10,000 which you were to receive for the tract of land known as the Cunningham land.

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I requested Mr. Holt to deliver me deed and possession of land, in consideration of tender of this money, all of which he refused to do. We have certainly lived up to our part of the contract and will just as surely expect you to do the same. You could not, under any circumstances, expect us to deliver you over the money for this land without giving us possession, neither would you buy a tract of land of me, or anyone else, with any cloud over the title. We stand ready to fulfill our part of the contract to the letter, without any variations, and I take it you are a business man and an honest man, and will certainly fulfill yours.

Yours truly,

O. D. HALSELL."

To this letter the following answer was sent:

"JOPLIN, MO., *March* 1, 1901.

Mr. Oscar D. Halsell, Oklahoma City, O. T.

MY DEAR SIR:—Your letter of the 27th just received, and I note what you say about tendering Mr. Holt, Cashier of the Western National Bank of your city, $9300.00 in cash and $500 held by Mr. Geo. J. Shields, my agent, and that you requested Mr. Holt at the

time to deliver you the deed and possession of what is known as the Cunningham tract.

Now Mr. Halsell, possession is what caused me so much disappointment and prevented me from closing the deal with you the day after my arrival in Oklahoma City, and the question of possession and how to obtain it was gone over and fully discussed in your presence and the presence of your associates by my attorney Mr. Shartel, at his office, who expressed doubt at the time about getting possession at a very early date, provided the lessee should give an appeal bond. After going over the matter as I supposed satisfactory to all, I tendered you my deed with such possession as I could give at the time, and which was not satisfactory to you and associates, and it was finally agreed to leave the matter with Mr. Everest to decide, and who came down to see me at the Lee Hotel that evening, and in endeavoring to get at a satisfactory understanding of the matter, he informed me that he had decided to give me thirty days to perfect my title. I remarked, 'suppose that I cannot perfect my title in thirty days, then what?' His reply was, 'That it would be a question of damages to be determined later.' I was not pleased with his demands, especially as I had no desire to throw the trade, so by the time I had reached Joplin the following day, I had made up my mind to give you the second opportunity of taking the property with such title and possession as I got when I became purchaser of same, and if not satisfactory to you I would call the trade off, all of which I have done.

Yesterday I had the same offer as made by Mr. Shields for you, except that the party agreed to take chances in obtaining possession himself. I wired that I would accept his proposition, and in case he makes satisfactory arrangements with me this week I shall close the deal with him.

I regret that I found matters in such a shape on my arrival there which prevented me giving you immediate possession of the property, as it was my intention and desire to do, and I wish you could have felt safe in accepting the deed with chances of possession later on, as I agreed to bear all expenses of a suit for possession. I could only offer you such title as I had, and I gave you the opportunity of taking that, and which you would have been as safe in accepting as any one else.

As to the $200 referred to I would have arranged that by taking a quit claim deed back from you and paying you $200 as a consideration, with the hope that Mr. Cunningham would reimburse me to that extent, and which I believe he would have done.

I especially note what you say about your being ready to fulfill your part of the contract to the 'letter' and without 'variations,' and as an honest man and a business man expected me to do the same. No one can know better than yourself how easily a person can unexpectedly be placed in a position where it is impossible for him to carry out a contract to the 'letter' and without 'variations.' You have doubtless made many sales to your customers to deliver goods at a certain price, and because of some unforeseen rise in the price or other causes you refused to fill or ship the order. You well know

that it was impossible for me to put you in possession, and my failure to do so was no greater disappointment to you than myself, and I regret exceedingly the termination of this matter.

Most respectfully, W. C. RENFROW."

This concluded the negotiations, and, a few days later, Renfrow conveyed the land to Edwards, who paid him ten thousand dollars, and paid the tenant five hundred dollars to obtain possession.

The District Court rendered judgment for the defendants, and the plaintiffs, after motion for new trial, bring the cause here for review.

206 Opinion of the court by BURFORD, *C. J.*:

Two questions are presented for our consideration: First, do the telegrams, letters, and other writings in evidence constitute such note or memorandum of an agreement to sell real estate as will satisfy the statute of Frauds, of which a court will decree a specific performance? Second, does the evidence show such a part performance of a parol contract for the sale of real estate as will authorize a court to decree specific performance?

While the arguments of counsel for plaintiffs in error are able, ingenious, skilled, and deserving of compliment, in our opinion the case does not present a problem of difficult solution. We have examined all the authorities cited by counsel in support of their several contentions, and concur in the propositions contained in these cases, but the facts proven, do not in our judgment, support the conclusions upon which these contentions are based. It cannot under the facts proven, be reasonably contended that, Shields, as Renfrow's agent had any authority to sell this land. Renfrow had placed the land with him for sale; this was an oral direction. No writing of any character had passed between Renfrow and Shields. This direction only authorized him to find a purchaser, and submit the propositions. An agreement for the sale of real property made by an agent is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged,—Sec. 780, Wilson's Statutes.

It is a well established proposition of general application that a complete contract binding under the Statute of Frauds may be gathered from letters, writings and telegrams between the parties relating to the subject-matter of the contract, and so connected with each other that they may be fairly said to constitute one paper
207 relating to the contract,—Beckwith *vs.* Talbot, 95 U. S. 289; Ryan *vs.* U. S., 136 U. S. 68; Bibb *vs.* Allen, 149 U. S. 481. But the facts proven do not come within the rule. In order to be sufficient the letters, telegrams, and writings relied upon must, by reference to each other, disclose every material part of a valid contract, and must be signed by the party sought to be charged. They must set out the parties, the subject-matter, the price, the description, terms, and conditions, and leave nothing to rest in parol.—Fox *vs.* Easter, 10 Okla. 527; Gould *vs.* Stormant, 51 Mich. 636; Eggleston *vs.* Waggoner, 46 Mich. 610; Ferguson *vs.* Blackwell, 8 Okla. 489.

It is a general rule that parol evidence cannot be permitted to supply an omission of any essential element of the contract. In Ferguson *vs.* Blackwell *et ux.*, 8 Okla., 489, this court held: that "Where a sufficient description is given in the contract, parol evidence may be resorted to in order to fit the description to the thing, but where an insufficient description is given, or where there is no description, such evidence is inadmissible because the court will never receive parol evidence both to describe the land, and then to apply the description." And we adhere to this doctrine as the safe and sound rule. In explanation, but not as a modification of this rule, it is said in Ryan *vs.* U. S., 136 U. S. 68: "It is not essential that the description have such particulars and tokens of identification as to render a resort to extrinsic aid entirely needless, when the writing comes to be applied to the subject-matter. The terms may be abstract and of a general nature, but they must be sufficient to fix and comprehend the property which is the subject of the transaction, so that with the assistance of external evidence, the description without being contradicted or added to, can be connected with and applied to the very property intended, and to the exclusion of all other prop-
208 erty."

Applying these tests, it is clear that there was no such written memoranda as the law recognizes as sufficient to supply the place of a written agreement. The first writing of any character appearing in the case is a check from Land, one of the plaintiffs, to Shields for five hundred dollars. There is no means of identifying this check, or its purposes except by parol evidence. It does not disclose anything that will supply any element of an agreement to sell the real estate in question. The next writing is the telegram from Shields to Renfrow, which states that he has sold the fifty acres, ten thousand cash, five hundred forfeit. This telegram is from the agent to his principal; it is not a communication between the parties to the transaction. Shields was not the agent of the plaintiffs, nor acting for them, he was agent for Renfrow, and communications between the agent and his principal do not ordinarily constitute a part of the agreement itself, but are explanatory of what has been done between the agent and the other party. But in this telegram, Shields says he has sold the property, and as heretofore held, he had no authority to sell, and any sale he made cannot be enforced. The next writing is the telegram from Renfrow to Shields: "I confirm sale by you ten thousand cash, five hundred forfeit." So far no vendees have been mentioned and no description of the property given. In order to supply these, it is the theory of counsel for plaintiffs in error that the deed executed by Renfrow and wife, and submitted by Renfrow to the plaintiffs at the time of the conference in Oklahoma City, contained the names of the vendees and the description of the land, and, although not delivered, that it is a writing that may be looked to to supply the description and vendees. While there are a very few cases holding that an undelivered deed
209 may be looked to to supply a description, they are cases where there had been an exchange of lands, and one or both parties had taken possession.—Parrill *vs.* McKinley, 58 Am. Dec. 1; Leon-

ard *vs.* Woodruff, 65 Pac. 199. But the general rule is that an undelivered deed forms no part of the transaction, and cannot be looked to to supply any omissions in the writings that have passed.—Steele *vs.* Fife; 48 Iowa, 99; Grant *vs.* Leran, 4 Penn. St. 393; Weir *vs.* Batdorf, 38 N. M. 22; Day *vs.* LaCasse, 27 Atl. (Me.) 124; Parker *vs.* Parker, 67 Mass., 409; Comer *vs.* Baldwin, 16 Minn., 172; Johnson *vs.* Brook, 56 Am. Dec. 547; Allebach *vs.* Godshalk, 116 Pa. St. But in view of the particular facts in this case we do not deem it important whether this deed could or could not aid the agreement. It is a conceded fact that the description in this deed was not a correct one, and both parties repudiated it. It embraced the Compton lot which Renfrow did not own, and he refused to deliver the deed with this lot embraced in the description, and it was orally agreed that a new deed should be drawn up, excluding the Compton lot from the description. The further contention is made that the deed sent to the Bank by Renfrow contained a correct description, and that it can be looked to to supply the description. If this could be permitted under the authorities cited, *supra*, it would not yet entitle the plaintiffs to recover in this action. If the writings alone are to be held as a sufficient memoranda to take the agreement out of the statute of frauds, and we do not think they do, then it would appear from such agreement that the consideration to be paid was ten thousand dollars, and the plaintiffs never tendered or offered to pay but $9800.00. It is true that it is claimed that Renfrow agreed to deduct $200.00 on account of the Compton lot being deducted from the land, but this was a parol agreement, and "A contract in writing may be altered by a contract in writing,
210 or by an executed oral agreement and not otherwise."—Okla. Stat. Sec. 829, Wilson's Stat. 1903; Swain *v.* Seamens, 76 U. S. 254. This alteration was not in writing, neither was it executed, for at that time nothing in the nature of a consideration had passed between the parties except the five hundred dollars paid to Shields, and this had not yet been accepted by Renfrow and was held subject to the final determination of the negotiations.

The subsequent letters of Renfrow to Halsell, and Halsell to Renfrow, and of Renfrow to Stone and to Lee, contain nothing that can be construed as any part of an agreement. They are competent evidence as containing admissions of one of the parties to the negotiations and go no further than this.

We deem it clear that no such written memoranda or notes passed between Renfrow and the plaintiffs as can by the most liberal application of the well established rules of law, be construed into a written contract. There is not an instrument, letter, memorandum or telegram signed by any of the plaintiffs and sent to Renfrow that has any reference whatever to the terms or provisions of an agreement, until the letter of Halsell declining the deed unless Renfrow would give possession at once and deduct two hundred dollars from the price as offered Shields.

The second proposition is, was there a parol agreement entered into between the parties, or part parol and part written, certain of enforcement in its terms, and which has been in such part performed

as will warrant a court in requiring specific performance of the remaining portion? Upon this question the burden of proof was upon the plaintiffs to show an oral agreement, and such part performance as would make it fraudulent and inequitable to allow the defendant to make use of the statute of frauds as a defense. The evidence fails to establish a contract; upon the contrary it is clearly ap-
211 parent that the question of delivering possession of the tract was one that the minds of the parties never did meet upon. The tenant, Springstine, was in actual possession; he demanded five hundred dollars for his interest. Renfrow refused to pay him anything, and offered his deed and such possession as he could deliver, subject to any rights the tenant then had, and offered to pay the expenses of waging a suit to oust the tenant. The plaintiffs refused to take the property except upon the condition of immediate possession, and demanded that Renfrow should purchase whatever interest Springstine had under his lease, and give them undisputed possession. Springstine and his attorney were brought into the conference and an effort made to secure an agreement to settle his rights by arbitration. This effort failed, and the tenant persisted in his demands for five hundred dollars or he would retain possession as against every one until his lease should expire in December, 1901. The parties separated and went to their several homes without ever reaching an agreement. Renfrow then sent the deed to the Bank and tendered the same, upon the conditions in his letter to Halsell. The plaintiffs declined his terms and tendered the money less the deduction for the Compton lot, only upon condition of immediate possession, which they knew Renfrow could not give unless he acceded to the demands of Springstine, which he had previously informed them he would not do. There was no parol agreement ever reached by the parties. The writings do not constitute a contract in writing, nor do the oral negotiations and partial writings constitute a parol agreement. It therefore follows, if there was no agreement to sell and convey, there could be no part performance which would avail the plaintiffs. Part performance of an agreement presupposes an agreement certain in its essential parts. But should we concede that the parties did enter into a parol agreement which but
212 for the statute of frauds might be enforced, we are of the opinion that the evidence does not show such partial performance on the part of the plaintiffs as will require a court of equity to enforce specific performance. It is true the plaintiffs paid Shields five hundred dollars with the purpose that it should be applied as a payment to Renfrow upon the purchase price of the land, but the mere payment of the consideration in money is insufficient to remove the bar of the statute. But payment of the purchase money accompanied by an entry into possession in good faith under the contract, with the consent of the vendor, and making valuable improvements on the land, is such a part performance as will support an action for specific performance.—Townsend *v.* Vanderwerker, 160 U. S., 171; Neale *v.* Neales, 9 Wall., 1; Brown *v.* Sutton, 129 U. S., 238.

Mr. Justice Brown in the case of Townsend *v.* Vanderwerker, *supra*, stated the rule thus: "The general principle to be extracted

from the authorities is that if the plaintiff, with the knowledge and consent of the promisor, does acts pursuant to and in obvious reliance upon a verbal agreement, which so change the relations of the parties as to render a restoration of their former condition impracticable, it is a virtual fraud upon the part of the promisor to set up the statute in defence, and thus to receive to himself the benefit of the acts done by the plaintiff, while the latter is left to the chance of a suit at law for the reimbursement of his outlays, or to an action upon a *quantum meruit* for the value of his services. In discussing what are and what are not acts done in part performance, which will entitle the plaintiff to a decree in his favor, the entry into possession of the land and the making of valuable improvements thereon is treated by all the cases as one of the most satisfactory evidences of part performance, and entitling plaintiff to a decree in his favor." And
213 this principle is exemplified in the following cases: Union Pacific Railway Company *vs.* McAlpine, 129 U. S. 305; Ryan *vs.* Dix, 34 N. Y. 307; Loury *vs.* Ten, 3 Bard. Chan. 407; Overstreet *v.* Rice, 96 Am. Dec. 279.

It is the general rule that the taking possession under a parol contract and making valuable improvements on the land will constitute such part performance as will enable the vendee to enforce specific performance, but it is also well settled that such acts of possession and the purpose of them must have been known to the vendor.

We do not think the manner and time of taking possession by the plaintiffs in this case, and the character of the work done on the land was done with the consent of Mr. Renfrow. It is true that Shields may have given them permission to make a survey and plat the land, but there is no proof that Shields had any authority over the land, and there is no presumption that a real estate broker having lands listed for sale, has any control over the lands, or the right to make a contract of sale. His authority to sell must be in writing, and one dealing with him must demand the written authority or deal at his own risk.

The plaintiffs rely upon the provisions of section 760 Wilson's Stat. 1903, which reads thus: "A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known, or ought to be known to the person accepting." And it is argued that inasmuch as Shields accepted the check for five hundred dollars and collected the money thereon, that such act constitutes a voluntary acceptance of the benefits of a transaction that carries with it Renfrow's consent to all the obligations arising from its acceptance. This rule limits the imposed consent to the facts known at the time or such as ought to be known to the person accepting. The check was given to
214 Shields as a payment upon an agreement to sell made by him without authority, and which could not be enforced and which was in fact never fully ratified by either the plaintiffs or defendants. Shields was not the agent of Renfrow to collect the purchase money or to make a conveyance; his authority to find a purchaser carried with it no implied authority to collect the purchase money when the land was sold. The plaintiffs by giving a check

payable to Shields personally made him their agent to deliver the money to Renfrow, and Renfrow never has received or accepted the money. If the check had been made payable to Renfrow, and he had endorsed it and collected the proceeds, a different rule would apply. We cannot hold under all the circumstances that Renfrow has ever in fact or in contemplation of law accepted anything from the plaintiffs, and hence he is not concluded from asserting his defense.

It seems clear that there was no error committed by the trial court, and that the judgment is clearly right upon the facts and the law. The judgment of the district court of Oklahoma County is affirmed at the costs of the plaintiffs in error.

All the Justices concurring except Irwin, J., who tried the case below, and Burwell, J., who did not participate.

215 *Certificate.*

In the Supreme Court.

UNITED STATES OF AMERICA, *Territory of Oklahoma, ss:*

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the foregoing 214 pages, numbered from 1 to 214, inclusive, are a true and complete transcript of the record and all proceedings in said Supreme Court in the case of Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright, and Jean Everest, Plaintiffs in error, *vs.* William C. Renfrow and R. J. Edwards, Defendants in error, as the same remain upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Guthrie, this 29 day of April, A. D. 1905.

[Seal Supreme Court Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 19,748. Oklahoma Territory Supreme Court. Term No. 254. Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest, Appellants, *vs.* William C. Renfrow and R. J. Edwards. Filed May 5th, 1905. File No. 19,748.

PLAINTIFF'S BRIEF

Supreme C

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October Term, 19

IN THE

Supreme Court

OF THE

United States.

October Term, 1905.

OSCAR D. HALSELL, OSCAR G. LEE, LEONIDAS L. LAND, DANIEL P. WRIGHT and JEAN H. EVEREST,
Plaintiffs in Error,
vs.
WILLIAM C. RENFROW and R. J. EDWARDS,
Defendants in Error.

No. 254.
(19,748.)

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

The action is one for the specific performance of a contract to sell and convey real estate. Defendant Renfrow, being the sole owner of the land in question, authorized a number of real estate agents to sell it for a designated sum, the authority being oral. The plaintiffs being desirous of buying the land, one of them, Wright, called upon one of the agents, Shields, and agreed orally on a purchase and sale. Another of the plaintiffs, Land, in pursuance of the agreement, called upon the agent and paid $500 of the consideration. The payment was

made by a bank check, which was cashed by the agent, and the amount, and no part of it has been paid or tendered back, but is still retained. The following is a copy of the check:

"Oklahoma City, Okla., 2-14-1901.

The State National Bank. Pay to the order of Geo. J. Shields $500.00 (Five Hundred Dollars).

2 cts. R. S. L. L. L. Feb. 14. 1901. L. L. LAND."

Advertisement printed: "George J. Shields, Real Estate and Real Estate Agent." Endorsed on back: "George J. Shields." Stamped: "Paid Feb. 14, 1901, State National Bank."

Each of the purchasers contributed his portion of the $500 paid. On the day of receiving and cashing the check, Shields sent a telegram to Renfrow, which was received by him, as follows:

"Oklahoma City, O. T., Feb. 14, 1901.

To W. C. Renfrow, Joplin, Mo.

Have sold the forty acres. Ten thousand cash, five hundred forfeit. Answer. GEORGE J. SHIELDS."

11:31 U. S. Rev. 1 ct.

On the same day Renfrow answered by telegram:

"Joplin, Mo., February 14, 1901.

George J. Shields, Oklahoma City, O. T.

I confirm sale by you, ten thousand cash, five hundred forfeit. W. C. RENFROW."

1:17 p. m. 1 R. Stamp 1 ct.

Plaintiff Lee had previously addressed a letter to Renfrow on the subject, which he answered on the same day of sending telegram of confirmation to Shields as follows:

"Keystone Hotel, Joplin, Mo., 2-14-1901.

Mr. Oscar Lee, O' City.

Dear Sir—Your letter of the 10th was received yesterday. But as I was expecting a telegram today concerning the property about which you wrote, I waited to hear from my party. And I have done so, and have just wired my acceptance of proposition. Very truly, W. C. RENFROW."

Another of the agents whom he had authorized to sell the property had been telegraphing, and five days previous he wrote him as follows:

"Keystone Hotel, Joplin, Mo., 2-9.

Mr. G. B. Stone, O' City, O. T.

Dear Sir—When I furnished you with a list of my property, I gave you prices also. And unless you can sell for same it would be useless to waste money on the telegrams

in hopes of a change in prices. I gave Messrs. Owen & Welsh, Mr. Shields and yourself the same list, and the same terms, and should I accept more favorable terms of sale from you I would not be treating them right. Ten thousand dollars is the least money that would purchase the Cunningham tract. Should a person prefer to pay two-thirds cash, and balance in six or twelve months, with 10 per cent, I would accept that. O. & W. and Mr. S. understand it that way, and I presumed that you did until I received your two telegrams. I leave for West Plains this P. M., and return here Tuesday or Wednesday. Respt'y, W. C. RENFROW."

In some way not disclosed, and which Renfrow appears to have forgotten, while still at Joplin he learned to whom it was desired the conveyance should be made, and he and his wife executed a deed, which he brought with him and came to Oklahoma City for the sole purpose of carrying out the contract. From the writings alone he was advised of the full terms of the transaction, and came prepared to perform the agreement. With the knowledge and consent of himself and agent, the purchasers caused the land to be surveyd into lots and blocks and a plat to be made, sold a number of the lots and received part payment, and removed the fencing from the land, and had a portion of it leveled down.

There was a mortgage for some $500 on the land, which was held by plaintiff Everest. There could have been no ignorance of this, since it was held by one party against the other to the transaction, and Renfrow visited Everest to ascertain the amount due. The terms and conditions of the purchase and sale were completed and fully understood by both parties, but there were obstacles in the way of performance unknown to one as well as the other.

Renfrow had an abstract of the title prepared, from an examination of which it was discovered that a parcel of ground 50 by 100 feet had been conveyed before he acquired the tract, which was a discovery by both parties of a deficiency of approximately one-eighth of an acre, there being about forty acres in the tract. A reduction of the price was requested because of the deficiency, and $200 was agreed to. The full consideration was $10,000; deducting $500 paid to Shields, $500 for the mortgage and $200 for the deficiency, Renfrow was entitled to receive $8,800. This is important, because of his claim of offers to perform the contract. It was also discovered after plaintiffs had surveyed and plafted most of the land and removed the fencing, that one Springstine was, or claimed to be, in possession of a portion of the premises.

It is suggested that the deficiency in the land and the claim of

Springstine are not elements of the contract, but obstacles in the way of its immediate performance, and that the one was removed by mutual agreement, and that this was no part of the agreement to sell and convey, but simply to make a reduction in the original price to be paid.

Renfrow claims to have offered to perform the contract by delivering the deed and accepting payment before leaving Oklahoma City. But whether he tendered the deed at this time could not be important, since the description was still defective, the mortgage was unpaid, and Springstine was in possession. Renfrow returned to Joplin, where he either executed a new deed or corrected the description in the original one: this deed as made or corrected was fully satisfactory. He sent it to the Western National Bank at Oklahoma City, with instructions to deliver upon payment to his credit $9,500, which, with the $500 paid the agent, would make the full $10,000. Edwards about this time offered to pay $10,000 for the land, and take it at once in its then condittion, and with no commission to the agent. This was a more favorable offer, in addition to the fact that the relations between the defendants were close. Renfrow notified Edwards that the deed had been sent to the bank, requested him to ascertain whether it had been taken up and the $9,500 paid, and advised him that if not, his offer would be accepted.

This proceeding bears the plain marks of a false pretense and fraud: the deed sent to the bank had been remade or corrected for the sole purpose of rectifying the description and consideration by deducting 50 by 100 feet from the one and $200 from the other: the description had been corrected, but the $200 was included in the demand for $9,500. And the mortgage for $500 was still on the land, and the bank was not authorized to make any provision for raising it.

When this deed was sent to the bank Renfrow addressed the following letter to plaintiff Halsell:

"Joplin, Mo., Feb. 25, 1901.

Mr. Oscar D. Halsell,
Oklahoma City, O. T.

My Dear Sir: I have this day mailed to the Western National Bank the deed to the Cunningham tract, and have instructed them to turn same over to you upon your depositing $9,500 to my credit, and $500 to the credit of George J. Shields, and I shall expect this to be done between banking hours on Wednesday, the 27th inst., as Mr. Everest notified me on Saturday night that he would expcet me to perfect title within thirty days, and was kind enough to extend me that length of time (only I presume)

I have concluded that I will bring this matter to a close

at once, and shall give you the opportunity of taking up the deed on Wednesday, or will consider the proposition at an end.

Trusting that you will give this immediate attention, I am, most respectfully, W. C. RENFROW.

P. S.—I write Mr. Shields today and instruct him fully in the matter."

The deed sent to the bank was as follows:

"WARRANTY DEED.

Know All Men by These Presents:

That W. C. Renfrow and Jennie B. Renfrow, husband and wife, of Oklahoma County, Territory of Oklahoma, parties of the first part, in consideration of the sum of Ten Thousand and no 100 ($10,000) Dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto Oscar D. Halsell of Oklahoma County, Territory of Oklahoma, party of the second part, the following described real property and premises, situate in Oklahoma County, Territory of Oklahoma, to-wit:

A portion of the North half of the Northwest quarter (otherwise designated as Lots 3 and 4) of Section Four, in Township Eleven (11) North of Range Three (3) West Indian Meredian, described as follows, to wit: Beginning at a point where the center of the alley between Noble and Chickasaw streets in South Oklahoma Addition to Oklahoma City intersect the east line of said land, said point being nine hundred and ten (910) feet south of the Northeast corner of said land, thence due West on a line parallel with the North line of said land to the West line thereof; thence North along said West line five hundred and eighteen (518) feet to the Southwest corner of the land deeded to Francis Kelsch; thence due North on a line parallel with the North line of said land twelve hundred and twenty-two and forty-three one-hundredths (1222.43) feet due North on a line parallel with the West line of said land; three hundred and ninety-two (392) feet to the North line of said land; thence East along the North line of said land five hundred and eighty (580) feet due West of the Northeast corner of said land; thence South on a line parallel with the East line of said land three hundred (300) feet; thence on a line parallel with the North line of said land one hundred and eighty (180) feet; thence South on a line parallel with the East line of said land three hundred and eighty (380) feet to the Southwest corner of

the Washington Public School land on said land; thence due East to the East line of said land; thence South along said East line to the point or place of beginning.

Save and except a strip of land two hundred (200) feet wide and three hundred (300) feet long and lying immediately West and adjoining a block of ground owned by Mrs. Meshacle Couch. Also excepting a certain piece of ground 50 by 100 feet deeded to C. A. Compton by Bennie L. Cunningham on August 29, 1898, and recorded on Record No. 7 Quit Claim Deed, page 184; also excepting the right of way of the St. Louis and San Francisco R. R. Co., together with all improvements thereon and appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgements, mortgages and other liens and encumbrances of whatsoever nature; except for the taxes for the year 1901, which the grantee hereby assums and agrees to pay.

Signed and delivered this 16th day of February, 1901.

W. C. RENFROW
JENNIE B. RENFROW.

In Presence of

_____

_____

$10 in Rev. stamps attached and
duly cancelled.
State of Missouri,

ss

Jasper County.

Before me, Jno. C. Keenan, a notary public in and for said County and State, on this 16th day of February, 1901, personally appeared W. C. Renfrow and his wife, Jennie B. Renfrow, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purpose therein set forth.

Witness my hand and official seal the day and year above set forth.

(L. S.)

JOHN C. KEENAN, Notary Public
My commission expires Oct. 31, 1901."

A number of the plaintiffs went to the bank, having with them $9300. They found the deed satisfactory, but the instructions to the bank were limited to collecting $9500. To show their preparation to perform, they prepared the following:

"Oklahoma City, Okla., 2-27--1901.

I hereby tender F. R. Holt, cash $9300.00, together with $500.00 now in the hands of Geo. J. Shields, agt. of W. C. Renfrow, as payment in full according to agreement with said Renfrow for tract of land known as Cunningham tract of land, and possession thereof, deed of which is now in hands of F. R. Holt, cashier.

Witness O. D. HALSELL

L. L. LAND

O. G. LEE

The above $9300.00 tendered and refused by F. R. Holt, cashier, 2-27-1901."

On the same day plaintiff Halswell wrote Renfrow as follows:

"Oklahoma City, O. T., 2-27-01.

Mr. W. C. Renfrow,
Joplin, Mo.

Dear Sir.—

I am in receipt of your letter of Feb. 25 th in which you call my attention to the fact that you have sent deed for Cunningham tract of land to Western National Bank, and that upon payment of $9500.00 placed to your credit and $500.00 placed to the credit of Geo. J. Shields, same will be delivered to me. Will say, that I today tendered to Mr. F. R. Holt, Cashier of the Western National Bank, $9300 in cash together with $500.00 held by Geo. J. Shields, your agent, and the $200.00 you agreed to allow for land sold off of said tract, would make $10,000.00 which you were to receive for the tract of land known as the Cunningham land.

I requested Mr. Holt to deliver me deed and possession of land, in consideration of tender of this money, all of which he refused to do. We have certainly lived up to our part of the contract and will just as surely expect you to do the same. You could not, under any circumstances, expect us to deliver you over the money for this land without giving us possession, neither would you buy a tract of land of me, or anyone else, with any cloud over the title. We stand ready to fulfiill our part of the contract to the letter, without any variations, and I take it you are a business man and an honest man, and

will certainly fulfill yours.

Yours truly,
O. D. HALSELL."

Renfrow answered as follows:

"Jolpin, Mo., March 1, 1901.

Mr. Oscar D. Halsell,
Oklahoma City, O. T.

My Dear Sir:—

Your letter of the 27th just received, and I note what you say about tendering Mr. Holt, Cashier of the Western National Bank of your city, $93,00 in cash, and $500 held by Mr. Geo. J. Shields, my agent, and that you requested Mr. Holt at the time to deliver you the deed and possession of what is known as the Cunningham tract.

Now Mr. Halsell, possession is what caused me so much disappointment and prevented me from closing the deal with you the day after my arrival in Oklahoma City, and the question of possession and how to obtain it was gone over and fully discussed in your presence and the presence of your associates by my attorney, Mr. Shartel, at his office, who expressed doubt at the time about getting possession at a very early date, provided the lessee should give an Appeal Bond. After going over the matter as I supposed satisfactory to all, I tendered you my deed with such possession as I could give at the time, and which was not satisfactory to you and associates, and it was finally agreed to leave the matter with Mr. Everest to decide, and who came down to see me at the Lee Hotel that evening, and in endeavoring to get at a satisfactory understanding of the matter, he informed me that he had decided to give me thirty days to perfect my title. I remarked, 'Suppose that I cannot perfect my title in thirty days, then what?' His reply was, that 'it would be a question of damages to be determined later.' I was not pleased with his demands, especially as I had no desire to throw the trade, so by the time I had reached Joplin the following day I had made up my mind to give you the second opportunity of taking the property with such title and possession as I got when I became purchaser of same, and if not satisfactory to you I would call the trade off, all of which I have done.

Yesterday I had the same offer as made by Mr. Shields for you, except that the party agreed to take chances in obtaining possession himself. I wired that I would accept his proposition, and in case he makes satisfactory arrange-

ments with me this week I shall close the deal with him.

I regret that I found matters in such a shape on my arrival there which prevented me giving you immediate possession of the property, as it was my intention and desire to do, and I wish you could have felt the same in accepting the deed with chances of possession later on, as I agreed to bear all expenses of a suit for possession. I could only offer you such title as I had, and I gave you the opportunity of taking that, and which you would have been as safe in accepting as any one else.

As to the $200 referred to I would have arranged that by taking a quit claim deed back from you and paying you $200 as a consideration, with the hope that Mr. Cunningham would reimburse me to that extent, and which I believe he would have done.

I especially note what you say about your being ready to fulfiill your part of the contract to the 'letter,' and without 'variations,' and as an honest man and a business man expected me to do the same. No one can know better than yourself how easily a person can unexpectedly be placed in a position where it is impossible for him to carry out a contract to the 'letter,' and without 'variations.' You have doubtless made many sales to your customers to deliver goods at a certain price, and because of some unforseen rise in the price or other causes you refused to fiill or ship the order. You well know that it was impossible for me to put you in possession , and my failure to do so was no greater disappointment to you than myself, and I regret exceedingly the termination of this matter.

Most respectfully,

W. C. RENFROW."

Edwards had knowledge of the transaction, and was upbraided a number of times as endeavoring to obstruct the performance of the contract. On February 28, the next day after the parties were at the bank, Renfrow telegraphed him:

"2-28,, Joplin, Mo. R. J. Edwards,

Oklahoma City, Okla. Property yours if Halsell failed to take deed from bank Wednesday, and same has been returned by Holt. See him. When shall I expect you?

W. C. RENFROW."

Edwards went to the bank and ascertained simply that the deed had not been taken up; the reason why was none of his "business." He then telegraphed Renfrow:

"Oklahoma City, O. T., Feb. 28, 1901.

Hon. W. C. Renfrow, Ccre Keystone Hotel, Joplin, Mo. Deed returned yesterday, be there Saturday morning fully prepared to act.

R. J. EDWARDS."

Edwards went to Joplin and received a deed to the land; he received the identical instrument which had been executed to Halsell and sent to the bank, with the name of Halsell erased and that of Edwards written in its stead and the dates changed, and without a re-execution.

The case was tried before the court and taken under advisement. At the time of announcing the decision, the court was orally requested to make findings of fact. A written request was filed with the Supreme Court of the Territory. Attention was called to it in the briefs as follows: "We have filed with the court a request for a statement of facts. * * * * * What is desired is a statement in compliance with sec. 2 of the Act of April 7, 1874, 18 Stat. at L. 27," etc. The request is renewed in the petition for the order for appeal to this court as follows: "and that a state..ent of the facts of the said case in the nature of a special verdict may be made and certified by this court to said Supreme Court of the United States," etc.

The Territorial courts, finding against the plaintiffs in error on the other propositions, make no finding as to the notice to Edwards or the effect of such notice. If our position is maintained, it will be necessary either to pass upon those questions or remand the case for the purpose of having them determined.

Aside from the relation of Edwards, the case involves these questions:

1. Do the writings constitute a valid contract to convey real estate?
2. If the writings do not constitute a valid contract, are the acts of the parties and the tresspasses of the plaintiffs with the consent of the vendor, sufficient to take the transaction out of the statute?
3. Is not defendant Renfrow estopped by the Oklahoma statute from denying the authority of his agent Shields and the validity of the contract, by reason of having knowingly received and retained a part of the consideration?

The first of these questions arises upon the written instruments: the second arises upon the evidence as to the conduct of the plaintiffs in error with the knowledge and consnt of Renfrow, after the purchase: the third arising upon the finding of the court that $500 of the purchase money was received and retained by the vendor and the

statute of the Territory providing that he is estopped thereby.

SPECIFICATION OF ERRORS.

The record specifies five errors, all of which are embodied in the three questions suggested in the statement of the case, but which are as follows:

1. The court erred in affirming the judgement of the district court.
2. The court erred in finding and concluding that the writings did not constitute a valid contract.
3. The court erred in finding and concluding that the conduct of the parties was not sufficient to take the transaction out of the Statute.
4. The court erred in failing to find and hold that defendants are estopped to dispute the contract.
5. The court erred in refusing to decree a specific performance of the contract.

BRIEF AND ARGUMENT.

1. There was a fair purchase and sale, all the terms of which were understood by the parties. The trouble arose when it was discovered there were some trivial obstacles in the way of immediate performance. And when defendant Edwards offered to buy the land on somewhat better terms, defendant Renfrow hastened to avail himself of the offer. It is now sought to invalidate the purchase by the plaintiffs by resort to the Statute of Frauds.

The Oklahoma court, page 128 of the record, finds that the agent Shields had no authority to sell the land, using this language:

> "It cannot, under the facts proven, be reasonably contended that Shields, as Renfrow's agent, had any authority to sell this land. Renfrow had placed the land with him for sale; this was an oral direction. No writing of any character had passed between Renfrow and Shields. This direction only authorized him to find a purchaser, and submit the propositions. An agreement for the sale of real property made by an agent is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged. Sec. 780, Wilson's Statutes."

With this the subject is dismissed. The provision referred to is also a part of Sec. 821 of the Oklahoma Statutes of 1893, and is as follows:

> "An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged."

In the face of this statute, although it is probably modified somewhat by subsequent legislation, it has not been contended that Shields

had authority to make a contract of sale binding upon Renfrow. And he did not attempt to do so. But when he had found purchasers who were willing to buy upon the terms which Renfrow had directed him to sell, he accepted $500 of their money and immediately telegraphed Renfrow that he had sold the land at his price in cash and received the $500. And Renfrow forthwith answered by telegram confirming the sale as made. The exchange of these telegrams is admitted in the record, page 43. And what we contend is, that the sale after this confirmation was just as valid and binding as if the agent had been previously authorized thereto in writing; and that the telegrams are competent to show the ratification of the acts of the agent, and being in evidence for that purpose, are competent for every lawful purpose; and relating to a past event, are competent, as far as they go, to show what that event is. They show that Renfrow has sold a forty-acre tract for $10,000 cash, and received $500. The word forfeit is used in the telegrams. "Penalties imposed by contract for any non-performance thereof, are void." Ok. S. of 1893, sec. 856. Construed with the statute, he had received $500 of the purchase price.

It is upon the Oklahoma statute that the sufficiency of the contract must be determined. The provision is brief and, except in one particular, very plain. It stands alone, sec. 4, page 93, Laws of 1897, and reads as follows:

> "No deed or mortgage, contract or agreement, relating to real estate or any interest therein, other than for a lease for a period not to exceed one year, shall be valid until reduced to writing and subscribed by the parties thereto."

The words "parties thereto" clearly mean the parties bound thereby, or who undertake to perform. They are used in connection with "deed or mortgage" as well as with "contract or agreement," and must have a reasonable interpretation. And it would not be reasonable that one must subscribe a deed made to himself or any instrument imposing no obligation upon him. And the word "valid" as used clearly means that the contract shall not have sufficient legal strength or force or be executed with proper formality to be enforcible until reduced to writing and signed. And it is plain that the writing may be made at any time. There is no limit fixed as to the time or manner of the writing, the only limitation being that it shall not be valid until written and signed.

This is clearly the meaning of the statute, and it follows that:

> "The form required does not go to the existence of the contract. The contract exists though it may not be clothed with the necessary form, and the effect of a non-compliance with the provisions of the statute is simply that no action can

be brought until the omission is made good. Thus the memorandum or note in writing may be made, so as to satisfy the statute, at any time between the formation of the contract and the commencement of an action."

Anson on Con., 2nd Am. Ed. page 67.

The Oklahoma court in this case finds, and there seems to be no dispute about it, that a complete contract, binding under the statute, may be gathered from letters, writings and telegrams between the parties and relating to the subject matter of the contract, and cites the following cases, which appear sufficient to clearly establish the proposition:

Beckwith v. Talbot, 95 U. S., 289
Ryan v. U. S., 136 U. S., 68
Bibb v. Allen, 149 U. S., 481

Now if the contract may be gathered from the several writings, and the writings may be made at different times, in what is this contract lacking?

At the outset we have a ratified sale for $10,000 cash and $500 paid, shown by the telegrams. But the Oklahoma court at this point observes:

> "So far no vendees have been mentioned and no description of the property given."

Here the Oklahoma court falls into and pursues at some length an error. This is the language of the opinion:

> "In order to supply these, it is the theory of counsel for plaintiffs in error that the deed executed by Renfrow and wife, and submitted by Renfrow to the plaintiffs at the time of the conference in Oklahoma City, contained the names of the vendees and the description of the land, and, although not delivered, that it is a writing that may be looked to to supply the description and vendees. While there are a few cases holding that an undelivered deed may be looked to to supply a description, they are cases where there had been an exchange of lands, and one or both parties had taken possession, etc. But the general rule is that an undelivered deed forms no part of the transaction, and cannot be looked

> to to supply any omissions in the writings that have passed, etc. But in view of the particular facts in this case we do not deem it important whether this deed could or could not aid the agreement. It is a conceded fact that the description in this deed was not a correct one, and both parties repudiated it."

We can find no application for this language, and nothing calling for it. We have no such theory as that indicated. A correct deed, one satisfactory to all parties, was made and fully executed ready for delivery, and sent to the Western National Bank for that purpose, and was there examined. It was the identical deed under which the defendant Edwards claims to hold from Renfrow, copied at page 112 of the record. Renfrow simply erased the name of Oscar D. Halsell and inserted that of R. J. Edwards, and changed the date. Pages 47, 49, 50 and 109 of the record. Whether Renfrow in good faith sent the deed to be delivered and by mistake demanded more than was due, or whether he made such demand for the fradulent purpose of causing delay in the closing of the transaction that he might find an excuse for turning the property to Edwards, perhaps is immaterial, but

> "Whatever may be said as to the effect of this deed in passing title, if it was delivered only for purposes of examination, or if the previous memorandum of sale had been tor any reason fatally defective under the Statute of Frauds, its recitals, coming as they do from the vendor, are competent for the purpose of showing the precise location of the property which the memorandum of sale was intended to embrace."

Ryan v. U. S., 136 U. S., 68

Mr. Ryan was trying to withdraw for some such purpose as induced Mr. Renfrow to undertake to make some other disposition of the property. And we see no reason why this does not apply perfectly. The deed shows the precise location of the property. It was the "forty acres." Page 43. It was the "Cunningham tract." Page 125. It is the same described in the deed sent to the bank. Pages 125, 126. It was the tract on which the $500 wa spaid to George J.

Shields. Page 126. And $200 was to be deducted from the $10,000 originally mentioned. Pages 126, 127, 128. And the trouble was as to how the contract could be performed—how possession could be given. Page 127. All these facts appear from the signed writings.

The Oklahoma court, in reference to the consideration, says:

> "If the writings alone are to be held as sufficient memoranda to take the agreement out of the statute of frauds, and we do not think they do, then it would appear from such agreement that the consideration to be paid was ten thousand dollars, and the plaintiffs never tendered or offered to pay but $9800. It is true that it is claimed that Renfrow agreed to deduct $200 on account of the Compton lot being deducted from the land, but that was a parol agreement, and 'A contract in writing may be altered by a contract in writing, or by an executed oral agreement and not otherwise.'"

This, it seems to us, is not a correct view. The parties were not making a new contract or altering the one made, but were endeavoring to correct a trifling mistake. And the correction was made: the little piece of land was omitted from the deed when it was made. There was no consideration to pay. Mr. Renfrow, perhaps through oversight, did not reduce his demand. Now was he, because the parties paused to remind him of this fact, justified in immediately withdrawing from the transaction? And the letters, the signed writings, explain this transaction and set forth this part of the contract, if it is a part of it. Pages 126, 127. And is it to be said that a trival dispute as to the amount to be paid, arising at the performance of a contract and not at its making, is sufficient to justify a party in abruptly withdrawing from his contract? If so, one may take great advantage of another by raising such a dispute, as Mr. Renfrow seems to be endeavoring to do in this case.

The contract is presumptive evidence of a consideration, and the burden of showing a want of consideration is upon the party seeking to avoid it.

Ok. S. of 1893, sec. 815.

There is no such thing as a specialty or distinction between that and a simple contract under our law, and no statute of frauds requiring the consideration to be expressed in any case where the contract is required to be in writing; in view of which, a sufficient consideration

being expressed, the true consideration may be shown by parole where the contract is sought to be avoided under the statute of frauds as well as in any other case, according to numerous respectable authorities, among them:

Kickland v. Menasha Wooden-ware Co., 31 N. W., 471.
Williams v. Robinson, 40 Am. Rep., 352
Gass v. Hawkins, Th. Tenn. Cas., 238
Whitby v. Whitby, 36 Tenn., 473
Thornburg v. Maston, 88 N. C., 293

But the fact should not be overlooked that the tender was more than was due from any standpoint. Plaintiff Everest held a mortgage for $500; $200, was to be deducted because of error; and $500 had been paid. So that only $8800 was due, and $9300 was actually tendered

The contract prior to this was fully made and understood: some of the specifications had not been reduced to writing. If after the contract was made and understood, Renfrow promised to relieve the purchasers from the payment of $200 of the purchase price, and this promise failed to become a part of the contract because not written, and they hesitated to pay the original price, and immediately called his attention to the matter, as was done by letter on the same day, page 126 of the record, that he might be heard to say whether he would keep the promise, does this circumstance so simple and natural justify his abrupt withdrawal from the whole transaction, and defeat their rights? Were they bound at their peril not to request him to keep this promise because it was not formally written? And he immediately acknowledged that the tender was a sufficient sum. Page 127. And on the next day after making the acknowledgement, and without giving the purchasers time or opportunity to make any further or different tender, he conveyed away the land and rendered such tender unnecessary. Page 28.

The statute requiring the authority of the agent to be in writing refers to the agent of the vendor, and not of the vendee. And the agent of the purchaser may make a good contract within the statute

of frauds without disclosing his principal, and the true relation may be shown by parol.

Tewksbury v. Howard et al., 37 N. E., 355
Roehl v. Haumasser, 15 N. E., 345
2 Parsons on Con., 7th ed., page 680

We have endeavored to cover the objections of the Oklahoma Supreme Court to the sufficiency of the contract. There is no doubt the contract in writing is plain, full and complete in every particular, if it may be drawn from the telegrams and letters, and the particular location of the land fixed by the deed. And there is nothing in the statute limiting the time within which the writings shall be made by which the contract may be shown. The only points of difference arising between the parties relate to the performance. The contract itself is not in doubt.

2. Did the conduct of the parties take the transaction out of the statute?

The purchasers had the land surveyed into lots and blocks, and staked, and a preliminary plat made. They sold some lots according to this survey and received partial payments. They had the fence torn down and carried the posts away, and had parts of the land leveled. They probably began this work with only the permission of the agent Shields.

Mr. Renfrow visited Oklahoma City for the purpose of carrying out the transaction, and arrived while this work was going on. Plaintiff Lee told him the purchasers were surveying the land, taking the fence away, and were going to plat and sell it immediately, and had sold some lots and received money. And Renfrow said it was all right and to go ahead. Page 51 of the record. The plaintiff Land told Renfrow that the agent Shields had told them to do it, and the purchasers had taken possession of the land, and were surveying and platting it. And Renfrow answered that it was all right, whatever Mr. Shields said. Page 71. of the record. And plaintiff Wright told Renfrow that he was doing some work on the land, and that there was a man plowing up the stakes. And Renfrow said, "Go ahead, and go right on doing the work just as though you had a deed to it." And he promised to go down and see about the matter. Page 76. And he

did go down to see who was interfering. Page 80.

The Oklahoma court did not take our contention very seriously, and appears to have taken it that we were claiming that the transaction was taken out of the statute because of valuable and lasting improvements. We are relying upon the old rule, which appears still to be good. The language of Cotton, L. J.., as quoted by Anson on Con. at page 82:

> "The true ground of the doctrine is, that if the court found a man in occupation of land, or doing such acts with regard to it as would prima facia make him liable to an action of trespass, the court would hold that there was strong evidence from the nature of the user of the land that a contract existed, and would therefore allow verbal evidence to be given to show the real circumstances under which possession was taken."

This doctrine does not seem to have been abandoned.

Allen v, Moore, 70 Pac., 682
Lawson on Contracts, sec. 475
Overstreet v. Rice, 96 Am. Dec., 279
Ryan v. Nevins, 90 Am. Dec., 696. Note.

If there is a further test it seems to be, whether the parties can be restored by the mere acts of themselves to their original position. Could Renfrow be compelled to pay for the trespass they had committed? Could he be made to restore the money they received from the sale of lots, or substituted in a prosecution for the larceny of the fencing? Could any act of the parties wipe out the trespass and crime of which they are guilty if they cannot justify as purchasers?

The law will not allow a purchaser to be left in this position, but will permit him to show his purchase by parol.

3. Is Mr. Renfrow estopped to deny the validity of the contract or the authority of his agent?

Our contention in this regard is based entirely upon a statute of Oklahoma. At the time of the purchase $500 was paid to the agent as a part of the consideration agreed upon. This payment was ratified by Renfrow. Page 43. He reocgnized it as so much of the purchase price received later. Pages 125, 126, 127. It has not been ten-

dered or paid back. Page 61.

The statute upon which we rely is a part of the act wherein the provision appears to the effect that no contract relating to real estate, except a lease for one year, shall be valid until reduced to writing. There is no subsequent statute modifying it. It qualifies the section 4 in the same act requiring the contract to be reduced to writing. It is section 7, page 94, Oklahoma Laws of 1897, and reads:

> "Any person or corporation, having knowingly received and accepted the benefits, or any part thereof, of any conveyance, mortgage or contract relating to real estate, shall be concluded thereby and estopped to deny the validity of such conveyance, mortgage or contract, or the power or authority to make and execute the same, except on the ground of fraud; but this section shall not apply to minors or persons of unsound mind who pay or tender back the amount of such benefits received by themselves."

The Oklahoma court did not favor us with its views of the effect of this statute upon the transaction, although we copied it in our brief and presented it as follows:

> "This language is plain and comprehensive. It cannot be said that it has reference to what would be a good contract, as one in writing in due form and subscribed by the parties. That would be binding whether he had received any part of the benefits or not, and such provision relating to it would be uncalled for and altogether without meaning. It means what it provides; that when he knowingly receives and accepts the benefits, or a part of them, as Renfrow knowingly received and accepted $500, this makes a contract binding which otherwise would not be, and precludes him from saying that it was not executed in some particular manner or that his agent was without authority to make the contract for him.
>
> "And this section so construed, if indeed it is not so plain that we need not say it is to be construed, is not seriously in conflict with the other sections recited. It only modifies them to this extent, that when the price or earnest money is paid it binds the property and closes the avenues of escape from the obligations of the contract. And this is no wide departure, since all or nearly all the statutes of the country contain this provision with reference to personal property, and among them our own. Statutes of 1893, Sec. 821."

The reasons for the enactment of this statute are found in the con-

ditions existing in Oklahoma. These conditions are now well known history. Under the acts of March 1 and 2, 1889, and the proclamation of the President issued in pursuance of them, Oklahoma became a populous community on the afternoon of April 22 following. They were without local laws and institutions for more than a year, or until after the act of May 2, 1890. And they were unable to acquire title to town lots until after the act of May 14, 1890. And it was several years thereafter before title passed to all the occupants.

They had no law relating to conveyances for more than a year; they had few titles to convey for several years. They came from all directions and entertained divers ideas about how to meet the emergency. They were in possession of real estate and engaged extensively in its sale and exchange, while the Government still controlled the title. The act of the legislative assembly of Oklahoma of March 12, 1897, entitled "Real Estate Conveyance, Mortgages and Contracts," sec. 7 of which is quoted above and relied on in this connection, prescribes forms for deeds and mortgages. Previously forms from nearly every state in the Union has been in use. The people had possessed only the uncertain rights of occupants—a mere chattel right at best. They had transferred this right almost as carelessly as they did horses and other chattels; and having formed the habit continued for a long time in it after titles were perfected. And it was certain that there would be a disregard for form for several years to come. An act validating such conveyances would perhaps have been sufficient to the time of its passage, but would not cover future transactions.

The section relied on in effect provides that before taking another's money one must be prepared to stand by the trade made by or for him, without reference to its form. And we hereby respectfully invoke it as precluding Mr. Renfrow from objecting to the form of his contract and the authority of his agent.

Defendant Edwards had full notice. Plaintiff Lee told him plaintiffs had bought the land. And at another time took hold of him and emphasized the statement. Page 52. Plaintiff Everest had a conversation with him to the same effect. Page 61. And he asked plaintiff Land how they were getting along selling lots. Page 72. Plaintiff Wright heard Lee accuse him of trying to interfere. Page 75.

Having such notice, if plaintiffs are entitled to recover, he should be required to convey.

Union Pacific R. R. Co. v. McAlpine et al., 129 U. S., 305.
Day v. Cohn, 4 Pac., 511.
Willis v. Wozencraft, 22 Cal., 617.
Calanchima v. Braustetter, 24 Pac. 149.

We maintain that the contract is good under the Statutes of Oklahoma; that if not, the transaction was taken out of the Statutes by the acts of the parties; and that in any case defendant Renfrow is precluded from denying the validity of the contract under the Statute, since he received and accepted a part of the benefits. And we respectfully request a reversal with direction to the lower court to order specific performance, etc.

OSCAR D. HALSELL,
OSCAR G. LEE,
LEONIDAS L. LAND,
DANIEL P. WRIGHT,
JEAN H. EVEREST,
Plaintiffs in Error

By JEAN H. EVEREST,
HENRY H. HOWARD,
Their Attorneys.

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...IN THE...

Supreme Court

OF THE

United States

October Term 1905

Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest,
Appellants.

vs.

William C. Renfrow and R. J. Edwards,
Appellees.

No. 254.
(19748)

BRIEF OF APPELLEES.

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Attorneys for Appellees.

WARDEN-DERMOTT PTG. CO., OKLAHOMA CITY

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BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

In some respects we desire to controvert and in others to enlarge upon the statement of the case in brief of appellants.

On page 2 of such brief, attention is called to a check for $500.00 given by L. L. Land to George J.

Shields, which was cashed by Shields, "and the amount and no part of it has been paid or tendered back but is still retained." Again, on page 10 of such brief, appellants refer to a finding of the court that, "$500.00 of the purchase money was received and retained by the vendor." We respectfully suggest that there is no such finding nor is there any evidence upon which such a finding could be based. The fact is, that Shields cashed the check and still retains the money, neither the appellants nor the appellees being willing to receive the same from him. (See letter from Shields to Renfrow, p. 118 of printed record.) Possibly this letter is not properly in evidence in the case, but there is no evidence in the case tending to show that Renfrow ever received any of the proceeds of the check, and the Supreme Court of the Territory find that he did not. (Rec. 133).

On page 2 of brief, appellants set out a copy of the check above referred to. A fact omitted in their statement of the case is that the appellants on their own confession (Rec. 23), afterwards, on advice of attorney, fraudulently mutilated this check by writing thereon the words: "On purchase of forty acres of land of W. C. Renfrow, known as Cuningham tract west and adjoining Washington school building, O. K. City, Oklahoma Co., O. T." (Printed Record 23), and then attached to their petition a copy of the check as mutilated (Record 18) and alleged therein that such check, as fraudulently altered, was a memorandum in writing.

executed by the said Shields, as agent of Renfrow, (Rec. 14).

On page 3 of brief, appellants say that, with the knowledge and consent of Renfrow, and his agent, "the purchaser caused the land to be surveyed into lots and blocks and a plat to be made, sold a number of the lots, received part payment and removed the fencing from the land and had a portion of it leveled down." The fact is, that they went to the land before Renfrow arrived at Oklahoma City (Rec. 125) and found it in possession of Springstein, who ordered them off; that they attempted to forcibly survey it but, as fast as they set stakes, the German working for Springstein plowed them out, (Record 80). Appellants then went away, refused to complete the trade with Renfrow, because they could not get possession and made no further attempt to take possession until about January, 1902, when, during the absence of Mr. Edwards from the city, and long after the suit was begun they took forcible possession of part of the land, (Record 90-91).

Appellants absolutely refused to close the deal with Renfrow unless he would give them immediate possession, (See letter from Halsell, Record 45, and opinion Rec. 125), until after the land had been sold to another and increased in value, when they began to claim that they were entitled to specific performance because they had been in possession all the time.

On page 7 of their brief is a written tender, made by Halsell and a letter writen by him to Renfrow, both of which show that at that time they were not willing to consummate the trade without immediate possession being given them, which they knew was impossible. Renfrow had previously offered to deliver the deed and to give such possession as he could obtain at as early a date as possible, but Halsell insisted that unless he could get immediate possession he did not want to have anything to do with it (Record 161).

On page 7 of brief, appellants say: "Edwards had knowledge of the transaction and was upbraided a number of times as endeavoring to obstruct the performance of the contract." The record shows that Edwards knew that the appellants had been negotiating for this land but was informed that such negotiations had been discontinued (Record 93-94); that sometime previous to the purchase by Edwards, Mr. Lee asked him if he was figuring on that place and, being told that he was, said: "You are interferring with me," (Record 91).

On page 10 of brief, appellants call attention to the fact that the deed made to Edwards was the same deed that had previously been executed to Halsell with dates changed but they say "without a re-execution." The deed, however, was re-acknowledged (Record 109-110).

On page 10 of brief, appellants say that the territorial courts made no finding as to the notice to Ed-

wards or the effect of such notice. It is true no special finding was made, but a general finding of all the issues in favor of defendants was made (Record 114.) The petition alleges that Edwards purchased with notice, the answer denies this (Record 27) and a general finding of the issues in favor of the defendants is equivalent to a special finding that Edwards did not have notice.

BRIEF AND ARGUMENT.

Instead of discussing this case as involving only three questions, as do appellants, we shall discuss it under nine heads:

I. Is the case properly here for the consideration of this court and, if so, to what extent can this court look into the evidence?

II. Specific performance is a matter of discretion and the ruling of the trial court and the supreme court of the Territory should not be interferred with, unless there has been an abuse of discretion.

III. That there was no writen contract between the parties as required by the statute of frauds.

IV. That there was never even an oral contract between the parties, the terms of which were all agreed upon.

V. That there was not a sufficient part performance to take the case out of the statute of frauds.

VI. Are appellees estopped from denying the validity of the contract?

VII. That Edwards is an innocent purchaser and therefore no specific performance could be had.

VIII. That by the fraudulent alteration of the check the whole contract becomes unenforceable, even if the documents were otherwise sufficient to constitute a legal contract.

IX. That appellants are estopped by having refused the only performance possible.

I.

IS THE CASE PROPERLY HERE FOR THE CONSIDERATION OF THIS COURT AND, IF SO, TO WHAT EXTENT CAN THIS COURT LOOK INTO THE EVIDENCE?

By the Act of April 7th, 1874, relating to appeals from territorial courts, it is provided that, "Instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission and rejection of evidence when excepted to, shall be made and certified by the court below and transmitted to the supreme court, together with the transcript of the proceedings and judgment or decree." 18 U. S. Stat. at L., Part 3, page 27. Under this Act, "If there is no finding of facts or statement of facts in the nature of a special verdict,

it must be assumed that the judgement was justified by the evidence." Marshall vs. Burtis, 172 U. S. 630, 43 Law Ed. 579. "Merely stating in its opinion the facts upon which it proceeds, but without making special findings, is not a compliance with this act." Thompson vs. Ferry et al, 180 U. S. 484, 45 Law Ed. 633.

But section 9 of the "Act to Provide a Temporary Government for the Territory of Oklahoma," approved May 2nd, 1890, provides that "writs of error and appeals from the final decisions of said supreme court shall be allowed and may be taken to the supreme court of the United States in the same manner and under the same regulation as from the circuit courts of the United States." and it has been held that the Act of 1874 does not apply to the Territory of Oklahoma so far as making appeal the proper method of obtaining a review of a law case tried to the court. Comstock vs. Eagleton, 196 U. S. 99, 49 Law Ed. 402. Oklahoma City vs. McMaster, 196 U. S. 529, 49 Law Ed. 587. These decisions leave unsettled the question whether any part of the Act of 1874 applies to Oklahoma Teritory. It would seem that Section I of said Act should apply to Oklahoma, as there is nothing in our Organic Act taking its place, and the proviso to section 2, quoted above, if applicable, would greatly simplify taking appeals to this court, and also eliminate the questions hereafter discussed as to the extent to which this court will weigh testimony.

If the Act of April 7th, 1874, applies, then the supreme court of Oklahoma, having made no findings in the nature of a special verdict, the evidence will be assumed to sustain the judgment and the judgment be affirmed.

But, assuming that the Act of 1874 does not apply and that the proper method of taking an appeal from the supreme court of Oklahoma to this court is by transcript of the evidence at large, to what extent will this court look into and weigh such evidence? On appeals from the United States circuit courts where the court below has tried the case upon written testimony, it is apparent that this court can judge the weight of such testimony as well as the court below, and the fact that it can do so furnishes the reason that it may do so; but, under the practice in the Territory of Oklahoma, equity cases may be tried to a jury and when tried by the court are heard upon oral testimony the same as law case. In the case at bar, practically all the testimony was by witnesses present in court and no appellate court can judge of the weight to be given their testimony as well as the court that heard them testify. For this reason, the supreme court of Oklahoma has announced and adheres to the doctrine that even in an equity case it cannot weigh the evidence.

"Under the Code of Civil Procedure, the court now hears oral testimony in chancery cases, and like a jury, considers the witnesses, observes their intelligence and capacity, their fairness or bias, their manner and characteristics, and has thus opportunities for judging of

the value of the testimony, such as this court cannot have. The rule is therefore, here adopted as in other states which have the same practice act, that a finding of fact by the court is equivalent to a verdict by a jury; and if there is testimony to support the material allegations of the petition, this court cannot disturb the finding and judgment even though the finding of fact by the trial court might be contrary to the judgment of the appellate court."

Ellison vs. Beannabia, 4 Okl. 352.

The Civil Procedure of Oklahoma, both original and appellate is governed by civil code, which civil code was literally borrowed from the state of Kansas in 1893 and was received with the settled construction of years in that state to the same effect.

Eckert vs. Rule, 51 Kan. 703, 32 Pac. 657.

Medill vs. Snyder, 61 Kan. 15, 58 Pac. 962.

Railway Co. vs. Hildebrand, 52 Kan. 284, 34 Pac. 738.

This rule being firmly established in Oklahoma and being the only rule that is reasonable under the Code of Civil Practice adopted there, it would seem to follow that this court in reviewing the decisions of that court acts only in the place of that court and can no more weigh the testimony than it could, and that this court should follow the rule of the court appealed from. Sanford vs. Sanford, 139 U. S. 642. 35 Law Ed. 290. It would seem strange, indeed, if this court should reverse the supreme court of Oklahoma for not weighing

the testimony when it had no power to do so. For this court to review the evidence would be to exert a power not confided to the court below and would involve the exertion of original and not appellate jurisdiction.

On the whole, we feel that this court must say either that the Act of April 7th, 1874, applies to Oklahoma so far as to require that on appeal a statement of the facts in the nature of a special verdict be made by the court below and that, in the absence of such a statement, the evidence will be assumed to sustain the judgment; or that this court stands in the position of the supreme court of the Territory, without power to weigh the evidence. If the latter be true, then a general finding, as there was in this case in favor of the appellees, includes a finding of all the necessary facts to constitute the claim of the party in whose behalf the decree is rendered. Gardenhire vs. Gardenhire, 2 Okl. 484. If the first be the case, then this appeal must be affirmed with no consideration of the evidence, but if the latter be the rule then the evidence may be examined to see whether there is any testimony reasonably tending to support the decision of the courts below, and every disputed material question of fact upon which there is any conflict in the testimony, no matter where the preponderance may be, is resolved in favor of the appellees.

Among other facts put in issue is, whether Edwards was a bona fide purchaser from Renfrow, without no-

tice; whether there was any part performance of the pretended contract; whether Renfrow or the appellees were at fault in rejecting title on account of the temporary possession of Springstein; whether Renfrow ever undertook to deliver instant possession; whether the appellants refused a reasonable time for him to obtain possession; whether the whole deal was called off at the conference at the Lee Hotel, where Halsell told Renfrow that he did not waat to have anything to do with it, unless they could get immediate possession.

II.

SPECIFIC PERFORMANCE IS A MATTER OF DISCRETION AND THE RULING OF THE TRIAL COURT AND THE SUPREME COURT OF THE TERRITORY SHOULD NOT BE INTERFERRED WITH, UNLESS THERE HAS BEEN AN ABUSE OF DISCRETION.

"There is no question but that specific performance is not an absolute right but a matter which rests entirely in the judicial discretion, exercised according to the settled principles of equity and not arbitrarily or capriciously and always with reference to the facts of the particular case.

26 Amer. & Eng. Enc. (2nd Ed.) 62, and cases cited.

McCabe vs. Matthews, 155 U. S. 550, 39 Law Ed. 256.

The facts of the case at bar show a pretended contract unfair at the time specific performance is in-

sisted upon, uncertain as to the description of the land and the amount to be paid, incomplete in that at no time after the preliminary telegrams, did the minds of the parties meet upon all the terms of the contract to be made, unilateral, in that at no time did the appellants sign any paper, nor was there any contract which Renfrow could have enforced against them, and the facts further show that the appellants were unwilling to perform the pretended contract in the only way performance was possible, and refused to accept such performance until the land had enhanced in value and Renfrow had sold and conveyed it to Edwards for a full and valuable consideration.

A case can scarcely be conceived wherein, if the appellants had made a showing under which specific performance might be had, there is a stronger appeal to the inclination of a court of equity to refuse specific performance as inequitable and unfair.

After having refused to perform the contract because immediate possession could not be given and insisting that they would accept no performance, except the one known to them to be impossible, and having waited until the land was conveyed to another, who took it with the possession they had refused, and then, when the land had increased in value, insisting on a performance which could not have given them immediate possession and could not have placed them in possession

sooner than they would have been under the tender which they refused manifests extremely bad faith and should be sufficient to justify the court in refusing the relief asked for by them, even though they had made a technical case for specific performance.

III.

THAT THERE WAS NO WRITTEN CONTRACT BETWEEN THE PARTIES AS REQUIRED BY THE STATUTE OF FRAUDS.

The claim of a written contract must be based upon some or all of nine writings introduced in evidence. These are: First, Check given by Land to Shields, February 14th, 1901, which, before it was mutilated by appellants, did not in any way show what it was given for. (Record 43).

Second, Telegram of same date from Shields to Renfrow reading: "Have sold the forty acres ten thousand cash, five hundred forfeit. Answer." (Record 43).

Third. Telegram of same date from Renfrow to Shields reading: "I confirm sale by you ten thousand cash five hundred forfeit." (Record 43).

Fourth. Letter of February 14th, 1901, from Renfrow to Lee stating that he had received a proposition and wired acceptance. (Record 44).

Fifth. Letter from Renfrew to Stone of February 9th, 1901, stating that he would not sell the land for

less than ten thousand dollars cash and that he had made the same terms to Owen & Welsh and Shields. (Record 44).

Sixth. Letter of February 25th, 1901, from Renfrow to Halsell, advising him that deed had been sent to Western National Bank. (Record 44-45).

Seventh. Deed executed by Renfrow and wife to Halsell reciting a consideration of ten thousand dollars, and which was never delivered.

Eighth. Letter from Halsell to Renfrow written February 27th, after appellants had refused to accept deed with such possession as Renfrow could give, in which Halsell says that he demanded possession of the land in consideration of the tender made by him and expresses himself that Renfrow could not under any circumstances expect them to take the land without possession. (Record 45).

Ninth. Letter from Renfrow to Halsell written March 1st, 1901, after appellants had refused to accept deed with such possession as Renfrow could give, in which no land is described and no proposition is made.

In considering whether these writings constitute a written contract within the statute of frauds, we must take each instrument by itself, except that where one instrument refers to another, the two may be considered together. The rule is that "two papers to make one

memorandum must contain a reference in one of them to the other."

Reed on Statute of Frauds, Sec. 344.

"Memoranda which do not refer to each other cannot be connected by verbal evidence."

Id. Sec. 352.

"The memorandum may be constituted of several writings as letters between the parties, but their connection and relations to each other must appear by the writings themselves, and cannot be shown by parol evidence of what the parties intended."

Tice vs. Freeman (Minn.) 15 N. W. 674.

"While no particular form of memorandum of sale is required by the statute of frauds, where several writings are relied on, they must be so connected by mutual reference as to make the contract clear without the aid of outside evidence connecting them."

Devine vs. Warner (Conn.) 56 Atl. 563.

With this rule in mind, we will take up each instrument referred to by the appellants and discuss its sufficiency as a memorandum under the statute of frauds; after which we will discuss some of the objections which apply equally to all of the claimed memoranda.

First. The check, as stated above, does not purport on its face to be given as part payment on any contract whatever. The greatest effect that can be given it is to treat it as a receipt given by Shields to Land for $500.00, without stating upon what account it was to be applied or for what purpose it was given.

"Receipts of payments on a parol contract for the sale of lands are not sufficient to take it out of the statute of frauds."

Williams vs. Morris 95 U. S. 444, 24 Law Ed. 360.

"An ordinary receipt for a portion of the purchase money for real estate will not constitute such a memorandum as will satisfy the statute of frauds, unless it shows on its face or by reference to some other instrument, every material part of a valid contract on the subject."

Fox vs. Easter, (Okla.) 62 Pac. 283.

It was probably in view of this rule that the appellants, afterwards mutilated the check as set out in their second amended petition and then attempted to use it as mutilated, to satisfy the statute of frauds. There could have been but one purpose in mutilating this check, and that was to make a fraudulent use of it and, even if the check as originally given had been sufficient to show a valid contract, appellants could not use it to establish their case after they had deliberately altered it for the express purpose of using it to perpetrate a fraud.

Second and Third. The two telegrams may be considered together, as one is in answer to the other. They are not sufficient to constitute a contract under the statute of frauds, for three reasons:

(a). They do not, on their face, purport to be a contract, but merely to be the authority from Renfrow for Shields to make a contract as his agent. Suppose Ren-

frow had executed to Shields a formal power of attorney, authorizing him to sell the land in question to any person, on terms therein stated and Shields had then made a verbal contract to sell on the terms stated in the power of attorney, it would not be for a moment contended that this would constitute a valid sale under the statute. Where a sale of real estate is made by an agent there must be shown not only the written authority of the agent, but the agent then must have made a valid written contract.

(b). The telegrams do not constitute a valid contract under the statute for the further reason that they do not name the purchaser.

"A memorandum in writing necessary to make a valid contract within the meaning of the statute of frauds though signed by the defendant and describing with sufficient distinctness the property sold and the consideration to be paid, is not sufficient to sustain an action unless the other party to the agreement is either named in the memorandum or so designated in some papers signed by the defendant that he could be identified without parol proof."

Grafton vs. Cummings, 99 U. S. 100, S. C. 25 Law. Ed. 366.

To the same effect are:

Breckenridge vs. Crocker, (Cal.) 21 Pac. 179.
Lewis vs. Wood, (Mass.) 26 N. E. 862.

(c). The telegrams are invalid as a contract for the third reason that they do not describe in any way the land. It will be remembered that the only mention of

the land in their telegram is as "the forty acres."

"A contract for the conveyance of lands, which a court of equity will specifically enforce, must be certain in its terms, and that certainty required has reference to both description of the property and the estate to be conveyed; and accordingly, wherever the property cannot be identified as the property described in the contract, specific performance will be denied."

Ferguson vs. Blackwell (Okla.) 58 Pac. 647.

"A contract for the conveyance of lands, which a court of equity will specifically enforce, must be certain in its terms and in the description of the property and the estate to be conveyed."

Preston vs Preston, 95 U. S. 200. 24 Law. Ed. 494.

The land in controversy does not contain forty acres, neither did the tract which Renfrow supposed he owned, but even if the land in controversy was just forty acres, no one can call the mere statement "Forty Acres" a description of the land.

Fourth. The letter from Renfrow to Lee of February 14th, 1901, does not pretend to state any contract, but merely says that the writer has accepted a proposition made.

Fifth. The letter from Renfrow to Stone was written before appellants pretend that they had any contract for this land, consequently it cannot refer to the claimed contract. At most, it is merely an acknowledgement by Renfrow of the fact that he had verbally placed this land with Shields for sale at $10,000.

Sixth. Letter from Renfrow to Halsell in which he says the deed has been sent to the bank, to give appellants another chance of completing the deal if they desire to do so. Nothing can be claimed under this writing apart from the other writings.

Seventh. The deed executed by Renfrow to Halsell cannot be considered as a memorandum under the statute of frauds for the reason that it was never delivered and was not executed in accordance with the contract appellants are attempting to enforce.

"Where a deed from the grantor and a mortgage from the grantee was made in pursuance of a verbal contract of sale of real estate, but not delivered, they cannot be used as a memorandum, within the statute of frauds upon which to enforce specific performance in equity."

Day vs. Lacasse (Me.) 27 Atl. 124.

"The execution of a deed without delivery, in such sense that the grantee acquires control of it, does not constitute a compliance with the statute of frauds, even though the grantee may temporarily have it in his possession."

Steel vs. Fife 48 Iowa 99, 30 Am. Rep. 388.

"The parties to an oral agreement for the sale of land went together to an attorney and had a deed therefor drawn, and the grantor signed it, and the grantee paid part of the consideration, and, after both parties had looked at the deed and expresed themselves satisfied with the form of it, the grantor took it for the purpose of procuring from his wife a release of her dower. Held, that there had been no delivery of the deed, so as

to give it effect either as a deed or memorandum in writing of the agreement within the statute of frauds.

Parker vs. Parker 67 Mass. (Gray) 409.

"A deed executed and handed to the grantee for examination merely, and not so as to constitute a delivery, is not a sufficient memorandum of a contract to convey the lands, within the statute of frauds."

Comer vs. Baldwin 16 Minn. 172 (Gil. 151).

"The signing of a deed for lands is not sufficient contract to satisfy the statute of frauds, unless delivered to the vendee."

Johnson vs. Brooks, 31 Miss. 17; 66 Am. Dec. 547.

"A contract for the sale of real estate was made by parol, and a deed thereunder made by the grantor, and left in the hands of his agents to await the arrival of the grantee's money. Held, that as there was no delivery of the deed, it was not available as a memorandum of a contract, nor would a certain mortgage and notes executed by the grantee, but not delivered, constitute a part of such memorandum."

Weir vs. Batdorf, 24 Neb. 83; 38 N. W. 22.

"Where defendant on entering into a parol contract with plaintiff for the purchase of land, paid a portion of the purchase money, and plaintiff thereupon delivered a deed, fully executed, to a third person under an agreement that he should deliver it to defendant when he paid the balance, which payment defendant promised to make, an action to recover the sum unpaid could not be maintained, as it was an action to enforce a parol contract for the sale of land, which was void under the statute of frauds."

Cagger vs. Lansing 43 N. Y. 550, reversing judgment (1870), 57 Barb. 421.

"The owner of land agreed with several parties to convey it to them and to execute deeds therefor, in accordance with the various portions which should fall to each from a lottery held to determine their shares. Deeds for the several lots were executed, but never delivered. In an action by the owner against one of the purchasers to recover a lot, held that, since the deed to the lot was never delivered, it was a parol sale of land and void, under the statute of frauds."

Allebach vs. Godshalk, (116 Pa. St.) 9 Atl. 444.

"A contract for the sale of real estate, wholly oral, does not become enforceable by reason of the fact that the vendor has signed a deed in accordance with the oral contract, so long as that deed remains in his possession or under his control; and it is equally under his control while it is in the possession of his attorney. Nor does the signing of a deed of land agreed to be conveyed, and its being sent to the attorney of the person signing, constitute a memorandum in writing which will satisfy the statute of frauds."

Morrow vs. Moore (Me.) 57 Atl. 81.

Appellants cite Ryan vs. United States, 136 U. S. 68, 34 Law. Ed. 447, as holding that a deed delivered for purposes of examination is competent to show the precise location of the property which the memorandum of sale was intended to embrace. In that case, the language quoted by appellants was not necessary to a decision and the court really holds that the previous writings fully described the land to be conveyed, but giving to the language of Mr. Justice Harlan full weight, that was a case where the deed was delivered upon con-

dition, and this is a case where there was no delivery whatever.

Though not cited by appellants, there are a few authorities holding that an undelivered deed may be a sufficient memorandum within the statute of frauds, provided such deed contains a memorandum of the agreement. This rule, however, would not help appellants in this case for the deed sent to the bank did not contain any memorandum of the agreement they now seek to enforce, particularly with regard to the consideration which is stated to be $10,000.00, whereas, the appellants are seeking to enforce a contract for a consideration of $9,800.00, and the very deed which they now seek to claim as a sufficient memorandum of the contract was refused by them for the express reason that they claimed the consideration to be different from that stated in the deed. In this connection, appellants say in their brief: "The parties were not making a new contract or altering the one made but were endeavoring to correct a trifling mistake," and argue that the statute of frauds does not require the consideration to be expressed in the written contract, and that the true consideration may be shown by parol, where the contract is sought to be avoided under the statute of frauds as well as in any other case. If it is true that a party may contract in writing to purchase certain real estate for a specific sum and then, in an action to enforce that con-

tract, compel the other party to convey for a less sum, the statute of frauds should certainly be repealed. There is, however, in our judgment, no basis for the contention of appellants on this point. The first case cited by them, Kickland vs. Menasha Woodenware Company (Wis.) 31 N. W. 471, illustrates the weakness of their position. That was an action for the price of land sold and conveyed, and it was merely held that the plaintiffs might prove by parol what was the whole consideration of the sale and that a considerable part thereof had not been paid, though not thereby to impeach the title conveyed by the deed, and the rule was limited to permitting to be shown by parol a consideration for the conveyance additional to that recited in the deed.

Eighth. This is a letter signed by Halsell and could not in any way bind Renfrow, or constitute a writing signed by him. It shows upon its face that at no time where the appellants willing to take anything the appellee could possibly have given them in the way of possession, and in effect declines to consumate the deal by making a condition known to the writer to be impossible of performance.

Ninth. The letter of March 1st from Renfrow to Halsell was written after Halsell had written him that appellants would not take the land without immediate possession, which they knew Renfrow could not give, and insisting that they would not accept anything but a

literal performance which they knew was impossible. This letter shows that it had been Renfrow's intention to convey the land known as the Cunningham tract to Halsell, but that in their negotiations they had failed to reach an agreemnt as to the matter of possession. It refers in no way to the telegrams, and merely gives the result of the unsuccessful attempt of the parties to agree upon the terms of the proposed sale, with a statement on Renfrow's part that he had been anxious to make the sale, and had offered to do all that was possible for him to do.

GENERAL OBJECTION TO THE SUFFICIENCY OF ALL THE WRITINGS.

First. Under the law in force at the time of the pretended contract a memorandum of the sale of real estate to answer the statute of frauds must have been signed by both parties. Of the nine instruments relied upon by appellants to establish their contract, none were signed by any of the appellants, except the check, which cannot be considered, for the reason above stated, and the letter and tender by Halsell. The other writings were all signed either by Renfrow or Shields alone. Section 4 of chapter 8, session laws of Oklahoma, 1897, provided:

"No deed or mortgage, contract or agreement relating to real estate or any interest therein, other than for a lease for a period not to exceed one year, shall be

valid until reduced to writing and subscribed by the parties thereto."

The effect of this section as applied to contracts for the sale of real estate was considered by the Supreme Court of Oklahoma in the case of McCormick vs. Bonfils, 9 Okla. 605. We quote from page 618:

"It was held by the District Court in this case that Sec. 4 requires that an agreement such as the one relied upon in this case should be reduced to writing and subscribed by the grantor and grantee. Counsel for plaintiff insists that this construction of the statute is erroneous. Without expressing any opinion as to the proper construction to be placed upon this act of the legislature, so far as a deed or mortgage is concerned, we think the language used by the legislature in this act is such that the construction of the district court placed theron is correct. The Act expressly provides that all contracts of this kind to be valid must be reduced to writing and subscribed by the parties thereto. We can only gather the legislative intent from the language used. The parties to such contract, of course, would be the plaintiff and defendant in this case, and we do not think that any error was committed by the court in construing this language to mean that to make this contract valid and binding, under the terms of this section of the statute, it should be subscribed by the plaintiff and defendant."

It will be noted that in the case cited, the pretended contract was contained in the lot of letters, some signed by the plaintiff and some signed by the defendant showing the theory of the court to have been in accordance with sound reasoning, that a contract is not signed by

both parties where a part of it is signed by one party and a different part is signed by the other.

On page 13 of their brief, counsel for appellants contend against this construction of the section quoted by the argument that every law must have a reasonable interpretation, ignoring the fact that the supreme court of the territory has passed upon this particular statute and the further fact that, if it was intended by the legislature that this section merely required that the party to be charged sign the contract, it would have been easier to have enacted a statute in the usual form, instead of saying that the contract shall be subscribed by the parties thereto.

Second. The obligation, if any, created by the writings was not binding upon the appellants and, therefore, the contract was invalid for want of mutuality.

"When a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other."

Rutland Marble Co. vs. Ripley, 10 Wall. 339, 19 Law. Ed. 955.

"The obligation must be mutual. 'In general terms, it may be said that unless the contract binds all the parties, it will be enforced against none of them."

22 Amer. & Eng. Enc. (1st.) 1019.

American Cotton Oil Co. vs. Kirk, 68 Fed. 791.

M. K. & T. Railway Co. vs. Bagley, (Kans.) 56 Pac. 759.

It must be apparent that, under the writings in this case, there never was a time when Renfrow could have

enforced specific performance against the appellants for none of them were ever legally bound to do any thing, and it follows necessarily that appellants cannot enforce the claimed contract against Renfrow.

Third. But, even if there had been a written contract, such contract is not one appellants are seeking to enforce. If there ever was any written contract it was to convey land in consideration of $10,000.00, while the contract they now seek to enforce is to convey a less tract in consideration of $9,800.00. In other words, if there was a written contract, appellants are not seeking to enforce it but are trying to enforce a parol modification therof.

"A stipulated price enters into legal contemplation of an agreement; and therefore, a note or memorandum which does not furnish evidence of price, is not sufficient to take a contract of sale out of the statute of frauds and perjury.

"A written contract falling within the statute of frauds cannot be varied by any subsequent agreement of the parties, unless such new agreement is also in writing."

Swain vs. Seamens, 76 U. S. 254, 19 Law Ed. 554.

IV.

THAT THERE WAS NEVER EVEN AN ORAL CONTRACT BETWEEN THE PARTIES, THE TERMS OF WHICH WERE ALL AGREED UPON.

One of the issues in the trial court being whether the minds of the parties ever met upon all the terms of

a contract, and that court having found generally in favor of the defendants, is equivalent to a special finding that there was never even an oral contract. This is strengthened by various parts of the opinion of the supreme court which says: "The evidence fails to establish a contract; on the contrary, it is clearly apparent that the question of delivering possesion of the tract was one that the minds of the parties never did meet upon. * * * There was no parol agreement ever reached by the parties. The writings do not constitute a contract in writing, nor do the oral negotiations and partial writings constitute a parol agreement." (Record 131).

If there was ever a contract of any kind between the parties it was the contract shown by the two telegrams which was to sell forty acres of land for $10,000.00, cash. This is not the contract appellants seek to enforce for the two reasons that the land they are claiming is not 40 acres and is not all of the land they had in mind at the time the telegrams were sent, and they deny that they are to pay $10,000.00, but claim the correct amount is $9,800.00. In other words, they are seeking to enforce what they say was agreed upon at a conference held in the Lee Hotel by deducting a part of the land originally claimed by them and also deducting $200.00 from the consideration. This conference was held after all parties knew that immediate possession of the land could not be given by Renfrow and the parties were discussing at the same time two distinct questions with

reference to this trade: First, What deduction should be made, if any, from the purchase price on account of the 50x100 not being owned by Renfrow; second, what arrangement could be made as to possession. Here were two things upon which the minds of the parties must have met before there could have been a completed oral contract. Upon the first proposition, their minds probably met, but upon the second appellants do not contend that there was any agreement. That there can be no contract unless there is full meeting of the minds of the parties upon all the terms thereof is elementary law If two persons are negotiating a sale they may agree upon the property to be sold, the price to be paid therefor and the terms of payment, but as long as there is anything in relation to the proposed sale that constitutes a difference between them, no trade has been made.

"Where the existence of a contract is a matter of doubt equity will not, as a rule, decree specific performance, especially in the case where property was rapidly rising in value."

DeSollar vs. Hamscome, 158 U. S. 216, 39 Law Ed. 956.

The statement of facts in the case cited show a contract nearer completed than the one at bar.

"Specific performance of an alleged contract will not be enforced unless the court can clearly see upon what proposition the minds of the parties have met in common intention."

Krum vs. Chamberlain (Nebr.) 77 N. W. 665.

"A suit for specific performance can only be maintained where the terms of the contract are so precise that they cannot be reasonably misunderstood; and specific performance will not be granted to enforce an agreement if any of its provisions are so far indefinite or ambiguous as to render it uncertain what were the intentions of the parties and what obligations they intended to assume."

Minn. Tribune Co. vs. Associated Press. 83 Fed. 350.

The contract sought to be enforced in this action is the conveyance of certain land in consideration of $9,800. All the evidence shows that at the time the $9,800.00 was spoken of the parties were also discussing between them the question of possession and we would like to have it pointed out where the evidence shows that the parties ever came to any agreement as to what should be done about possession.

V.

THAT THERE WAS NOT A SUFFICIENT PART PERFORMANCE TO TAKE THE CASE OUT OF THE STATUTE OF FRAUDS.

Appellants claim that there was such part performance of the pretended contract by the payment of a part of the purchase price and the taking of possession as to take the case out of the operation of the statute. They apparently admit the rule, about which there is no question, that part payment alone is insufficient and

base their claim of part performance upon possession. We contend that there has been no such part performance as to take the case out of the statute for several reasons:

1. Appellants never did take possession of the land or any part of it until long after this suit was commenced, when they took it by force. (Record 74-76-90-91-125). That possession obtained by force or wrongfully will avail nothing, see 1 Sugden on Vendors 152, Star page. Prior to the commencement of this suit they merely made an unsuccessful attempt to take possession, but found the land in the possession of another party and so left it.

   Possesion to avail under the statute of frauds must be actual, open, notorious, definite and exclusive. How can their possession be said to be actual or exclusive when they were forcibly driven off the land by another. On page 19 of their brief, counsel for appellants complain that the parties cannot be restored to their original position with reference to possession. An examination of the testimony, however, shows that Springstein immediately and promptly restored them to their original position when they attempted to survey this land.

2. Possession in order to take a contract out of the statute of frauds must have been taken at the time of making the contract sought to be enforced or subsequent thereto.

   "Acts done prior to the contract, since they are neither in pursuance nor any execution of it, are never a part of the performance upon which to base a specific enforcement of the agreement in a court of equity; and therefore

possession taken when the negotiations between the parties began and in anticipation of rights which might accrue from an expected contract, is held to be unavailing as an act of part performance."

Pomeroy on Specific Performance, Sec. 110.

The contract which appellants seek to enforce if made at all was made at the conference at the Lee Hotel while all acts of theirs with reference to taking possession were done before that time. In this connection, it should be borne in mind that they now seek to enforce a pretended contract as they claim it was modified at the Lee Hotel conference and they are not asking to enforce the contract made by the telegrams, if the telegrams made a contract.

"Parol modifications of a written contract which is within the statute of frauds is not validated by a part performance of the written contract, consisting of platting land included therein."

Buttz vs. Colton, (Dak.) 43 N. W. 717.

3. The acts done were not in execution of a sale but merely preparatory or introductory to an expected sale. The testimony on behalf of appellants shows that they told Shields they would like to get the property on the market as soon as they could and asked permission to commence surveying it and getting it ready. Such acts are not a sufficient part performance.

"Act subsequent to the contract and even in pursuance of it, if not strictly in performance of the contract as between the parties to it but preparatory to such performance, cannot be taken as part performance * * therefore, giving instructions, for the lease, putting the

deed into a solicitor's hands to prepare a conveyance, giving orders for the conveyance to be drawn and going several times to view the estate the execution and registration of deeds by the vendor, and the measurement of the estate have all been decided not to be acts of part performance binding on the other party to the contract."

Fry on Specific Performance, Sec. 599.

The whole theory of part performance is that the party shall have placed himself in such a position that it would be a fraud upon him to refuse performance. In this case to refuse performance will leave the parties, with reference to possession, just where they were when the suit was begun.

"Although its operation (the doctrine of part performance) has doubtless been beneficial, and the principles and rules upon which it rests are firmly established, yet the courts are careful not to extend it to new circumstances or relations not embraced within those rules and principles. That the statute of frauds is a wise and politic enactment, and accords with the common experience of mankind, is shown by its adoption in nearly all of the states, and the tendency at the present day is strongly in favor of sustaining and enforcing its provisions."

Pomeroy on Contracts, page 139.

On the same page is quoted the opinion of Lord Redesdale in Lindsay vs. Lynch as follows:

"The statute was made for the purpose of preventing perjuries and frauds; and nothing can be more manifest to any person who has been in the habit of practic-

ing in the courts of equity, than that the relaxation of the statute has been a ground of much perjury and much fraud. If the statute had been rigorously observed, the result would probably have been that few instances of parol agreements would have occurred. Agreements would, from the necessity of the case, have been reduced to writing. Whereas it is manifest that the decisions on the subject have opened a new door for fraud, and that, under pretense of part execution, if possession is had in any way whatever, means are frequently found to put a court of equity in such a situation that, without departing from its rules, it feels itself obliged to break through the statute. It is, therefore, absolutely necessary for courts of equity to make a stand and not to carry the decisions further."

To conclude all controversy under this heading, the court has found by its general finding that the appellants never did take possession or do any other act in part performance and by authority of Renfrow, and that question is now at rest by this finding amply supported by the evidence. (Record 100). This view is also adopted by the supreme court of the territory, which says: "We do not think the manner and time of taking possession by the plaintiffs in this case and the character of the work done on the land was done with the consent of Mr. Renfrow." (Record 132).

VI.

ARE APPELLEES ESTOPPED FROM DENYING THE VALIDITY OF THE CONTRACT.

The claim is made that Section 7 of the Conveyancing Act of 1897 which reads:

"Any person or corporation, having knowingly received and accepted the benefits, or any part thereof, of any conveyance, mortgage or contract relating to real estate shall be concluded thereby and estopped to deny the validity of such conveyance, mortgage or contract, or the power or authority to make and execute the same except on the ground of fraud; but this section shall not apply to minors or persons of unsound mind who pay or tender back the amount of such benefits received by themselves;" modifies the provisions of Section 4, which provides that " no deed, mortgage, contract or agreement relating to real estate or any interest therein other than for a lease for a period not to exceed one year shall be valid until reduced to writing and subscribed by the parties thereto," to the extent that a partial payment of the purchase price and its retention by the vendor will make a case of estoppel or part performance which obviates the entire force of the provisions of Sec. 4 and makes a verbal contract good. It would be hard to understand why the legislature in one instance would enact a law which would be more rigid in its requirements than the original type of all of the statutes of frauds, requiring the signature of both parties instead of the party to be bound by the obligation merely ,and at the same time overturn this rigid requirement by loosening up in the other direction in favor of acts of part performance taking the case out of the statute which would not do so at common law. If the construction contended for by counsel is correct, the legislative policy would be incapable of explanation. In other words, under the existing state of the statutes you would have to do more in Oklahoma in the way of a written contract to have it comply with the statute of frauds by the force of the writing, and to do less to take the case out of the statute of frauds than at common law, a policy which would be incapable of a rational explanation. At common law

even full payment of the purchase money without a written memorandum would not take the case out of the statute. On this proposition the authorities are uniform, except in the single state of Iowa, where there is an express statute making part payment sufficient to make a verbal contract of sale binding. See Pomeroy on Specific Performance Sec. 112.

There could have been but one idea in the mind of the Legislature in passing a more rigid statute than the English Statute of Frauds and Perjuries, and that was to make the rule of written proof more stringent and the requirements greater. They did this in two particulars: First, In requiring the contract to be subscribed by both parties; and second, in requiring a contract instead of a memorandum. In the latter particular, the authorities recognize the distinction in the language between reducing a memorandum of the contract to writing and signing it by the party to be bound and requiring the contract itself to be manifested in writing and subscribed by both parties. The old statute, Par. 821 Statutes of 1893, declared certain contracts (among which the contract in question would fall) invalid unless same, or note or memorandum thereof be in writing. The note or memorandum is one thing and the contract is another. Under the note or memorandum clause, Mr. Reed in his work on statute of frauds, Sec. 325 says:

"The writing need not be the contract itself executed as such by both parties. The note or memorandum though subsequent to the making of the contract if signed by the party to be charged is sufficient. The

memorandum is not the contract, but only the evidence of it."

The statute requiring the contract to be reduced to writing and subscribed by the parties thereto implies a more formal and fuller writing embracing all the details of the contract than a statute requiring some note or memorandum thereof. That the legislature intended these contracts should be executed by both parties there can be no question. Now, why they should progress in this direction to narrow the margin of facts and circumstances surrounding a sale depending on the treacherous memory of witnesses or their more treacherous perversion of facts depending on oral evidence, should require a mutuality of the obligation expressed in the writing and at the same time by Section 7 open wider the door for escape from the force of the statute and give a greater latitude to the play of the forgetfulness or falsification of evidence of witnesses, by making a simple act of part payment sufficient to take the case out of the statute of frauds, we repeat would be imputing to the legislative body an inconsistency of purpose which the courts jealously avoid in construing a statute. The fact is the legislature had no thought of overturning any part of Section 4 by the enactment of the provisions of Section 7. The language of Section 7 any conveyance, mortgage or contract relating to real estate means a contract evidenced in the manner required by Section 4, namely, a contract in writing; and it is not

until Section 4 has been complied with by creating a contract in writing that Section 7 has any application. Under the various complex transactions in connection with real estate abundant causes arise for the avoiding of deeds or contracts after they have been executed in accordance with the statute of frauds as from false representations under which signatures may be procured, violation of some positive enactment such as requirement of revenue stamps, duress, fraud and other instances too numerous to mention. The legislature intended to do nothing more by the act in question than to emphasize and announce the wholesome rule that after a contract was properly executed in accordance with the requirements of the conveyancing law that that contract should remain binding upon the party knowingly receiving the benefits. In fact, the word "knowingly" would seem to imply that the object sought to be gained by Section 7 was to prevent a party from receiving the value of the contract knowing that he had been wronged or defrauded and keep the money or consideration paid him and at the same time repudiate or rescind the agreement. Many instances of this kind exist where a transaction is positively prohibited by the law as in case of gambling contracts where a consideration might be paid and retained by the party receiving it and where he could both keep the consideration and refuse to execute an unexecuted agreement with regard to the land. Section 7 can have full play over the sub

ject that it was designed to reach without in any way being considered as modifying Sec. 4. The very language of Section 7 implies that the contract that is upheld on the principle of estoppel is a contract which is already passed under the requirements of Section 4. The section means written documents and not verbal understandings with reference to real estate.

We therefore respectfully submit that if the appellants have not forfeited their right to recover back the $500.00 on account of the wilful and fraudulent mutilation of the documents in evidence for the purpose of trying to make a written contract where none existed that the law remits them to the simple action for money had and received against Mr. Shields or the appellee Renfrow as the facts may warrant recovery. In this same connection it might also be remarked that the evidence clearly shows that the appellee, Renfrow, has never received any part of the $500.00 in controversy, that he has refused to accept, keep or retain any part if it and that the money is still in the hands of Shields. (Record 118). The territorial supreme court found that Renfrow never has received or accepted the money. (Record 133).

VII.

THAT EDWARDS IS AN INNOCENT PURCHASER AND THEREFORE NO SPECIFIC PERFORMANCE COULD BE HAD.

There will be no dispute between the parties hereto but that, if Edwards was an innocent purchaser of the property for value specific performance becomes impossible and there can be no decree for such performance in appellant favor; on the other hand if Edwards purchased with knowledge or notice of appellants' rights, then specific performance may be had against Edwards, provided the appellants are entitled to specific performance as against Renfrow.

The authorities seem to discuss the effect of notice rather than the question of what constitutes notice which seems to be more a matter of evidence than a question of law.

There are, however, some rules which should be borne in mind in considering the question. For instance, "The question upon constructive notice is not whether the purchaser had the means of obtaining and might by prudent caution have obtained knowledge in question but whether the not obtaining it was a matter of gross or culpable negligence."

2 Sugden on Vendors, page 529.

"The rule of equity not to relieve against a purchaser having the legal estate is not confined to a prudent or wary purchaser, but to a bona fide one without notice."

Id. page 551.

"If a purchaser had notice only that a draft of a deed was prepared, and not that the deed was executed he would not be bound by the notice, although the deed

realty was executed, for a purchaser is not to be affected by a notice of a deed in contemplation."

Id. page 567.

We think it may safely be said that to charge a purchaser with notice it is not sufficient to show that he knew that certain parties were negotiating for the purchase of the land, but that it must be shown that he knew or that he was guilty of gross negligence in not knowing that a sale had been so far completed that the purchasers acquired legal rights thereunder. For instance, a man is not to be prohibited from buying a tract of land merely because he knows that someone else has been trying to buy it. Applying this idea to the case at bar, Edwards is not to be charged with notice of appellants' rights if they had any, unless he knew, or was guilty of gross negligence in not knowing at the time he purchased of Renfrow that the negotiations between Renfrow and the appellants had progressed so far as to create an enforceable right in the appellants. That Edwards was a purchaser for value cannot be questioned. The only question is as to his notice of appellants' rights, provided they had any, which we deny.

Now the evidence merely goes to the extent of showing that Edwards had been negotiating for the purchase of this land before the pretended contract with appellants, that he knew at the time that appellants were also negotiating for its purchase. (Record 91 to 93). He also knew that Renfrow came to Oklahoma City for the

purpose of closing the trade, but was unable to do so, that after his return to Joplin he sent a deed, to be tendered to appellants, and that such deed was not received by them, but had been returned to Renfrow, Edwards never knew until long after he purchased, the actual condition of the negotiations between appellants and Renfrow. We submit that any ordinary man desiring to purchase a tract of land, and merely knowing what Edwards did at that time that other parties had been negotiating for it, would be fully justified in assuming that the contemplated deal had fallen through with and that he was then at liberty to negotiate with the owner for its purchase. It surely cannot be said that his failure to know that an enforceble contract had been made between the parties was due to any gross or culpable negligence, and, unless it was, no specific performance can be had, regardless of whether appellants had a contract enforcible against Renfrow. The finding of the court being in Edwards' favor puts the matter at rest.

VIII.

THAT BY THE FRAUDULENT ALTERATION OF THE CHECK THE WHOLE CONTRACT BECOMES UNENFORCEABLE EVEN IF THE DOCUMENTS WERE OTHERWISE SUFFICIENT TO CONSTITUTE A WRITTEN CONTRACT.

It seems that Land gave Shields a check for $500.00

as a forfeit on the purchase price of the property; this check was written as an ordinary bank check, and was subsequently to that time, as admitted by the appellants, and after the check had been paid by the bank, altered by inserting the fact that it was given in part payment for the land in controversy. (Record 23). It was also further altered by affixing thereto a United States revenue stamp and canceling same, (Record 23), and if it was admittedly true that the chain of papers urged by appellants constitutes a good contract, still the alteration of the check would overthrow the entire contract, avoid the future enforcement of its unexecuted provisions and defeat any recovery of any consideration paid on account of such a contract. The recitation in a bill or check of the consideration for which it is given added to the check after its execution vitiates it as against any party.

Paragraph 831, Wilson's Statutes of Oklahoma, 1903, and which was in force at the time, reads as follows:

"The intentional destruction, cancelation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act."

The fact that the alleged contract is embraced in numerous documents brings it under the rule that the material alteration of one of them forfeits all rights under all of them. No attempt was made to explain

this alteration, and the fact of a material alteration in the contract is presumed to be fraudulent until the contrary is made to appear by the party making the alteration.

Soaps vs. ———— 2 Ills App. 375.
Dietz vs. Harder 72 Ind. 203.
Eckert vs. Pickle, 59 Iowa, 545.
Davis vs. Eppler, 38 Kans. 639.
Phoenix Ins. Co. vs. Kerny, 100 Ky. 97.
Owen vs. Hall, 70 Md. 96, 16 Atl. 376.

The fact that appellants admit their fraudulent conduct in making this alteration does not advance their case, because an instrument once altered cannot be restored.

Robinson vs. Reed, 46 Iowa, 219.
Shepherd vs. Whetstone, 51 Iowa, 457, 1 N.W. 753.
Botton vs. Edwards, 2 Dana (Ky.) 106.
Lockana vs. ———— 74 Ky. 69.
Citizens Natl Bank vs. Richmond, 121 Mass. 110.
Warpole vs. Ellison 4 Huston (Del.) 322.
Lock vs. Walker, 2 Ark. 4.
Fulner vs. Seitz, 68 Pa. St. 237.

It must be assumed for the purpose of this case that the alteration was fraudulently made.

Burwell vs. Orr, 84 Ill. 464.
Inglish vs. Breneman, 9 Ark. 902.
Eckert vs. Louis, 84 Ind. 895.
Pyle vs. Oustatt, 92 Ill. 209.
Wilson vs. Harris, 55 Iowa 507.

"Where an action is brought as on the original indebtedness the alteration of the written security or evidence of the debt is presumed fraudulent, and the bur-

den of the proof is upon the plaintiff to show that there was no fraudulent intent when the alteration was made."

Warder et al vs. Willyard (Minn.) 49 N. W. 300.
See also Croswell vs. Lebree, 81 Me. 44, 16 Atl 331.
Citizens Natl. Bk. vs. Williams, 174 Pa. St. 66.

Our statute makes the rule very stringent by defeating the instrument if alterations are wilfully and intentionally made.

"The vitiated effect of an alteration cannot be obviated by afterwards attempting to restore the instrument by erasing the words unauthorizedly inserted, especially after an attempt to recover upon the instrument in its altered form."

Shepherd vs. Whetstone, 51 Iowa, 457.
Hays vs. Wagoner· 89 Ill. 390.
2 Cyc. 182.

"The alteration of any one of several writings, all of which are material to show the actual agreement of the parties will vitiate all of the papers."

2 Cyc. page 224.

Thus the fraudulent alteration of a note will destroy the right of action on the mortgage.

Crawford vs. Hazeltree, 117 Ind. 63, 18 N. E. 603.
Walton Plow Co. vs. Campbell, 37 Neb., 52 N. W. 883.
Vogel vs. Repper, 34 Ill. 100.

The materiality of the alteration of the check is manifest at once when it is remembered that it is the only pretense or written memorandum of the sale in any fashion accepted by Shields, who is claimed to be Ren·

frow's agent. The mere giving of the check and the endorsement on it by Shields imported nothing except a business transaction whereby he was paid $500.00; that it was for the sale of a certain piece of property and part payment on that sale imported everything, because by that Shields in so far as the recitation in the check was concerned manifested his written assent to the terms therein by the written endorsement of the check. And appellants themselves thrust this altered check into court as a basis for their cause of action, counted on it in its altered form, seeking to perpetrate the fraud both upon the parties in interest and the court. The fact that the appellants afterwards became good and retracted that course does not detract from the fact that the check was fraudulently altered, and being a material feature in a chain of documents which it is claimed united to form one single contract which is now sought to be specifically enforced, invalidated the whole transaction.

"An oral agreement for the sale of land by defendant to plaintiff was, by agreement, reduced towriting by plaintiff, who handed it to defendant's agent, with a check for the earnest money provided for in the contract and told the agent that when defendant signed the contract he was to give him the check, and then returned the contract to plaintiff. The contract stated that it was for the sale of forty acres of land at $300 an acre, but the agent, before giving it to defendant to sign, added the words, "more or less" after the words "forty acres." Defendant signed the contract in that form and was given the check, and the contract was returned to plain-

tiff, who, as soon as he discovered the alteration, offered it back to defendant and demanded his check, but defendant insisted on the fulfillment of the contract as signed. Held, that the alteration avoided the contract, and plaintiff was entitled to recover his check."

Sherwood vs. Merritt, 53 N. W. 512.

"Where a contract is evidenced by several writings, all of which are material to show the actual agreement of the parties, the fraudulent alteration of any of them by one of the parties invalidates all."

Meyer vs. Huneke, 55 N. Y. Crt. of App. Star page 416.

IX.

THAT APPELLANTS ARE ESTOPPED BY HAVING REFUSED THE ONLY PERFORMANCE POSSIBLE.

The appellants are also estopped from asking specific performance in this case from the fact that they refused the deed as tendered by Renfrow for the specific reason that he could not deliver them immediate possession of the land.

"Plaintiff and defendant agreed to exchange real property, and that the deeds should be delivered by a certain date if the titles were perfect. Defendant objected to plaintiff's title and demanded a guaranty of title from a trust company. Held, that a letter from plaintiffs attorney during the negotiations as to the plaintiff's title, stating that plaintiff ought not to be required to give a guaranty, because defendant's title was more defective than plaintiff's did not estop plaintiff from demanding specific performance of the contract,

since the letter did not amount to a refusal to accept defendant's title."

Scannell vs. Amer. Soda Fountain Co., 68 S. W. 890.

In the case cited, while not expressed, the doctrine is clearly recognized that if the plaintiffs had refused to perform, on account of defendant's defective title, that they could not afterwards enforce such performance.

In the case of Oliver Mining Co. vs. Clark (Minn.) 68 N. W. 23, the court, on page 24 of the opinion, says:

"When the plaintiff refused Clark's title that title was hopelessly involved. It was wholly out of Clark's power to clear it, and there was no probability whatever that it would ever be any better. Under these circumstances, a refusal by plaintiff to accept the title was intended to be an irrevocable refusal, and the exploration company had a right so to undertsand it. What was there at that time for plaintiff to wait for? It could not lie by, act dog in the manger, refuse an incurable title itself, and for an indefinite length of time prevent every one else from taking title. Under the circumstances appearing in the complaint, the exploration company had a right to regard plaintiff's refusal to accept this incurable title as an election to proceed for damages, if for anything."

Applying the same reasoning to the case at bar, when appellants refused to perform without immediate possession being given, the possession was hopelessly involved. It was wholly out of Renfrow's power to give it. Under these circumstances, the refusal by appellants to accept the deed without immediate possession was intended to be an irrevocable refusal, and Renfrow had

a right so to understand it. What was there at that time for appellants to wait for? They could not lie by, act dog in the manger, refuse the only possession that was possible and for an indefinite length of time prevent every one else from taking that title. Under the circumstances Renfrow had a right to regard appellants refusal to accept the deed with the only possession that was possible as an election to proceed for damages, if anything. They were unwilling to take the land without immediate possession until it had greatly enhanced in value, when they suddenly became anxious to have it, and began asserting that they had been in possession all the time.

"Where the purchaser of land has an option to avoid the contract for objections to the title any delay in deciding whether he will accept the same will defeat his right to a specific performance.

"Where the purchase of land is made upon condition the title is found good, the purchaser is only entitled to a reasonable time in which to determine whether he will take the title the vendor has, or reject it. He cannot keep the contract open indefinitely, so as to avail of a rise in the value of the property or relieve himself in case of a depreciation.

"Time may be implied as essential in a contract from the nature of the subject matter of the contract. If the thing sold be of greater or less value, according to the effuxion of time, then time is of the essence of the contract, and must be observed in equity as well as at law."

Hoyt vs. Tusbury et al. 70 Ill. 332.

"When, at the time of the sale of real estate, the

vendor offers the vendee all the title he has in the premises, both parties knowing at the time that the vendor's title is not perfect, and the vendee at a subsequent day brings a bill of equity to enforce against the vendor the conveyance of a perfect title, the bill will be dismissed."

Mills vs. Van Vohris, 23 Barb. (N. Y.) 125.

"Plaintiff filed a bill in equity to compel defendant to convey coal lands in pursuance of agreement. Upon the hearing of the bill it was shown that the defendant's paper title was defective, and that the plaintiff had insisted that defendant get the proper release to make it good, which defendant made an attempt to do and partially succeeded. Subsequently, while plaintiff was insisting that the title be perfected, defendant sold the coal to a third person at an increased valuation. Held, that plaintiff could not refuse to take title on account of its defects, and at the same time hold defendant to her contract, and decree for specific performance should be refused."

Respectfully submitted,

WILLIAM C. RENFROW,

R. J. EDWARDS,

Appellees.

By JOHN W. SHARTEL

JAMES R. KEATON,

FRANK WELLS,

Their Attorneys.

Supreme Court of the United States.

No. 254.—October Term, 1905.

Oscar D. Halsell, Oscar G. Lee, Leonidas L. Land, Daniel P. Wright and Jean H. Everest, Appellants,
vs.
William C. Renfrow and R. J. Edwards.

Appeal from the Supreme Court of the Territory of Oklahoma.

[May 14, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action for the specific performance of an alleged agreement to convey land, brought by the plaintiffs in error against the defendants in error. The case was tried before a Judge of the Supreme Court, and all the issues were found for the defendants. It then was taken before the full Court upon a transcript of the evidence and proceedings, and the judgment for the defendants was affirmed. Okl. . Thereupon it was brought here by appeal.

It is assumed by the parties that the statement of facts prefixed to the opinion in the record is not the finding required by the Act of April 7, 1874, c.80, § 2, 18 Stat., Part 3, 27, and we assume for purposes of decision that under the Act of May 2, 1890, c. 182, § 9, 26 Stat. 81, 86, no such finding of facts was necessary. See *Oklahoma City* v. *McMaster*, 196 U. S. 529. *Rama* v. *Rama*, (April 2, 1906.) But when, as here, the court of first instance saw the witnesses, the full Court of the Territory would deal with its finding as it would with the verdict of a jury, and would not go beyond questions of the admissibility of evidence and whether there was any evidence to sustain the conclusion reached. *Ellison* v. *Beannabia*, 4 Okl. 347, 352. This Court naturally would go no further unless in an unusual case. See *Sanford* v. *Sanford*, 139 U S. 642.

In view of these preliminaries, if any statement is necessary here when the judgment sets forth that the Court "finds the issues in said cause in favor of the defendants," a single matter would be enough. It appears from the petition that after the defendant Renfrow, who was the owner of the land, had broken off his dealings with the plaintiffs, he conveyed the premises to the defendant Edwards. In Edwards's answer it is alleged that he purchased for value and without notice. The answer of Renfrow though less specific is to like effect. This was one of the issues in the cause which were found for the defendants, as upon the evidence it well might be.

Therefore it is not necessary to go further in order to show that the judgment cannot be reversed. For, of course, specific performance is impossible where the party to the contract has sold the property to one who is free from all equities. However, as the full Court put its affirmation of the judgment upon other grounds we will not stop at this point.

The full Court sustained the single judge on the ground that under the Oklahoma statute in force at the time no contract relating to real estate, other than for a lease for not over one year, "shall be valid until reduced to writing and subscribed by the parties thereto;" Laws of 1897, ch. 8, § 4, and that the statute had not been satisfied, or the case taken out of it by part performance. This statute, if taken literally and naturally, goes further than its English prototype. It is not satisfied by a memorandum made with a different intent, but requires an instrument drawn for the purpose of embodying the contract, and, in the case of an agreement to buy and sell, the subscription of both the buyer and seller, not merely that of "the party to be charged therewith." *McCormick* v. *Bonfils*, 9 Okla. 605, 618. There was no such instrument. We rather infer that the Court below inclined toward the foregoing construction, but its discussion suggests that possibly a memorandum to be gathered from connected documents might be enough, and, therefore, again, we do not stop here.

The case for the plaintiffs is this: Shields, an agent without authority in writing, as required by the Oklahoma statute, made an agreement to sell the land for ten thousand dollars, and received a check for five hundred dollars. Material additions were made to this check afterwards by the plaintiffs, so that it is a question at least whether it was admissible in evidence. Wilson's Stat. Okl. 1903, § 831. See *Bacon* v. *Hooker*, 177 Mass. 335, 337. The agent telegraphed to Renfrow that he had sold "the forty acres ten thousand cash five hundred forfeit," and Renfrow telegraphed back confirming the sale. Later it turned out that a parcel of fifty by one hundred feet had been conveyed to a third person. The parties met and it was agreed orally that two hundred dollars should be taken from the price for this. It was found further that one Springstine had or claimed possession of a part of the land under a lease. Renfrow was willing to convey and to take proceedings to turn Springstine out, but the plaintiffs refused to take a conveyance or to pay unless they were put into possession in thirty days. While matters stood thus Renfrow signed a deed of the land, excepting the conveyed parcel, expressed to be in consideration of ten thousand dollars, sent it to a bank and wrote to the plaintiff Halsell that he had done so, and had instructed the bank to deliver the deed upon his depositing $9,500 to Renfrow's credit and $500 to the credit of Shields within two days. This is the nearest approach to a memorandum that was made. Halsell replied to Renfrow that he had

made a tender of $9,300, and that this with the $200 agreed to be allowed for the strip conveyed and the $500 held by Shields would make the $10,000. He further stated that he had requested delivery of possession which had been refused, and that Renfrow could not expect the money without giving possession. Renfrow replied, stating that he had been willing to give such possession as he could, suggesting that he would have arranged in another way as to the $200, and that he regretted the termination of the matter. That was the end of the dealings, and directly afterwards the sale to Edwards took place.

As the plaintiffs were unwilling to accept the deed unless a fuller and more undisputed possession were given than could be given at the time, Renfrow was justified in selling to another who would take the risk or rely upon his covenants. In fact Edwards paid $500 to get possession, in addition to Renfrow's price of $10,000. Moreover, the plaintiffs' unwillingness shows that apart from the differences as to consideration there was no agreement with regard to an essential term of the conveyance when the deed was sent to the bank. There may have been a previous oral agreement, such as is suggested by the letter and deed, but before any memorandum was made and while Renfrow still was free the plaintiffs were informed that Renfrow would undertake to do only what he could, and what we have stated. So far, therefore, as the writings convey the notion of an absolute undertaking to convey a present clear possession, they do not express the modified bargain to which Renfrow was willing to assent. The delivery of the deed was authorized only upon payment of the price, and acceptance of it would have been an assent to Renfrow's terms. But there was no such assent. The plaintiffs say now that the differences were only trifles, not going to the essence of the contract, but they were enough at the time to make them unwilling to accept the deed.

In view of the findings of the trial Judge it is difficult to see what is open as to part performance. As there was no agreement at the last stage, there can have been no part performance then. The few steps, if any, that were taken, while everything rested in parol, before the modification as to the amount of land and the price, and the arising of the difficulty as to possession, were disputed and obliterated by Springstine under his adverse claim as a lessee. We think that this matter does not deserve discussion at greater length.

It is said that the defendant Renfrow is estopped by the payment of five hundred dollars to Shields by force of the act of 1897, ch. 8, § 7, to the effect that any person "having knowingly received and accepted the benefits, or any part thereof, or any conveyance, mortgage or contract relating to real estate shall be concluded thereby and estopped to deny the validity of such conveyance, mortgage or contract, or the power or

authority to make and execute the same, except on the ground of fraud." But here again we are met by the findings and the facts. The check given to Shields was not a payment to Renfrow. Shields had not even oral authority to convey or to receive the purchase money. The terms of Renfrow's letter to Halsell about the deed show that he had not accepted the delivery of the check as a payment then, and since then it would seem that neither party to the litigation has been willing to accept the money.

It appears to us unnecessary to amplify further the reasons for affirming the judgment below.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.